



REPUBLIC OF THE PHILIPPINES

## Sandiganbayan

QUEZON CITY

### THIRD DIVISION

**PEOPLE OF THE PHILIPPINES**

**OF THE**

*Plaintiff,*

**- versus -**

**ORVILLE A. FUA, et al.,**

*Accused.*


**Criminal Case No. SB-19-CRM-0099**

*For: Violation of Section 3 (e) of Republic Act No. 3019, as amended.*

*Present:*

**CABOTAJE-TANG, P.J.,**  
Chairperson,  
**FERNANDEZ, B., J.** and  
**MORENO, J.**

*Promulgated:*

*December 7, 2023* 



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## DECISION

**CABOTAJE-TANG, P.J.:**

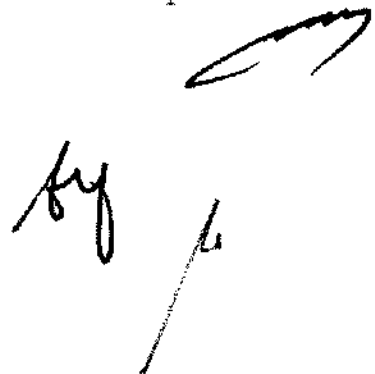
### THE CASE

Accused Orville Ano-os Fua (Fua), Ana Marie Leilani Sumalpong Monte (Monte), Rose Marie Villacampa Tomogsoc (Tomogsoc), Ivan Ypil Marchan (Marchan), Natalio Bongcawel Jumawan, Jr., (Jumawan), Sue Agnes Aljas Castillon (Castillon), Teodoro Gom-os Jumadla, Jr., (Jumadla), Yolanda P. Milne (Milne), and Merlyn Estallo Lu (Lu) are charged with a Violation of Section

3 (e) of Republic Act (R.A.) No. 3019, as amended, in an *Information* which reads:

That on May 7, 2004, or sometime prior or subsequent thereto, in Lazi, Siquijor, Philippines, and within the jurisdiction of this Honorable Court, accused public officers **ORVILLE FUA y ANO-OS** (Municipal Mayor, SG-27), **ANA MARIE LEILANI MONTE y SUMALPONG** (Municipal Accountant, SG-24), **ROSE MARIE TOMOGSOC y VILLACAMPA** (Municipal Treasurer/BAC Member, SG-24), **IVAN MARCHAN y YPIL** (Municipal Budget Officer/BAC Chairman, SG-24), **NATALIO JUMAWAN, JR. y BONGCAWEL** (Municipal Engineer/BAC Member, SG-16), **SUE AGNES CASTILLON y ALJAS** (Private Secretary/BAC Member, SG-11), and **TEODORO JUMADLA, JR. y GOM-OS** (Planning and Development Coordinator, SG-24), all of the Municipality of Lazi, Siquijor, committing the offense in relation to office and taking advantage of their official functions, acting with manifest partiality, evident bad faith or gross inexcusable negligence, conspiring and confederating with one another and with accused **YOLANDA P. MILNE** and **MERLYN E. LU**, representatives of Mangopina Trading Company, Inc. (Mangopina), did then and there willfully, unlawfully and criminally cause undue injury to the government and give [sic] unwarranted benefits, privilege, and advantage to Mangopina and/or accused Milne and Lu, by entering into a contract or transaction in behalf of the government with Mangopina for the purchase of Two Thousand Ninety-Six (2,096) bottles of MRG Liquid Fertilizer at P1,550.00 per bottle and One Thousand Two Hundred Fifty-Eight (1,258) bags of DEL GRO Super Foliar Fertilizers at P1,550.00 per bag or a total of **Four Million Nine Hundred Ninety Thousand Seven Hundred Fifty-Two Pesos (P4,990,752.00)** after tax, as reflected under DV No. 300-0405-004 dated May 7, 2004, notwithstanding the irregularities and anomalies attending the procurement process, accused knowing fully well that said transaction was in violation of Republic Act No. 9184 (The Government Procurement Reform Act) and its Implementing Rules and Regulations, including but not limited to the premature

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issuance of the Purchase Request; reference to brand names; lack of performance security bond; and lack of proof of the project's implementation, to the damage and prejudice of the government in the aforestated amount of **P4,990,752.00**.

CONTRARY TO LAW.<sup>1</sup>

### **THE PROCEEDINGS**

In its *Resolution* promulgated on May 28, 2019, the Court found probable cause against all the accused in this case. Accordingly, it issued *warrants of arrest* and *hold departure orders* against them.<sup>2</sup>

On June 10 and 13, 2019, accused Jumawan,<sup>3</sup> Monte,<sup>4</sup> Tomogsoc,<sup>5</sup> Castillon,<sup>6</sup> Fua,<sup>7</sup> and Jumadla<sup>8</sup> posted bail before Branch 46 of the Regional Trial Court (RTC), Larena, Siquijor. Accused Castillon,<sup>9</sup> Tomogsoc,<sup>10</sup> Fua,<sup>11</sup> and Jumadla<sup>12</sup> posted their additional cash bail bonds with the same court on June 17, 2019. Thereafter, or on June 14, 2019, accused Monte<sup>13</sup> and Jumawan<sup>14</sup> also posted their additional cash bail bonds. On even date, accused Marchan posted his cash bail bond in full before this Court.<sup>15</sup>

When arraigned on August 9, 2019, accused Marchan entered a plea of "*not guilty*."<sup>16</sup>

<sup>1</sup> *Id.* at pp. 1-4

<sup>2</sup> p. 245, Vol. I, Record

<sup>3</sup> *Id.*, at p. 290

<sup>4</sup> *Id.*, at p. 288

<sup>5</sup> *Id.*, at p. 294

<sup>6</sup> *Id.*, at p. 298

<sup>7</sup> *Id.*, at p. 302

<sup>8</sup> *Id.*, at p. 306

<sup>9</sup> *Id.*, at p. 381

<sup>10</sup> *Id.*, at p. 382

<sup>11</sup> *Id.*, at p. 384

<sup>12</sup> *Id.*, at p. 469

<sup>13</sup> *Id.*, at p. 452

<sup>14</sup> *Id.*, at p. 462

<sup>15</sup> *Id.*, at p. 272

<sup>16</sup> *Id.*, at p. 445

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On August 27, 2019, accused Jumadla filed a “*Motion to Quash or Dismiss*” on the grounds that [1] the facts charged in the *Information* in this case do not constitute an offense; [2] more than one (1) offense are charged; and, [3] the criminal action in this case had been extinguished.<sup>17</sup> The prosecution filed its *Opposition*, dated September 2, 2019, thereto on September 4, 2019.<sup>18</sup> In its *Resolution* promulgated on November 7, 2019, the Court denied accused Jumadla’s *motion to dismiss* for lack of merit.<sup>19</sup> On November 21, 2019, accused Jumadla filed a “*Motion for Reconsideration*” of the said *Resolution*.<sup>20</sup> This *motion* was denied by the Court in its *Resolution* promulgated on January 21, 2020.<sup>21</sup>

Upon their arraignment on August 30, 2019, accused Fua, Monte, Tomogsoc, and Castillon entered separate pleas of “*not guilty*.”<sup>22</sup> Accused Jumawan,<sup>23</sup> Lu,<sup>24</sup> and Jumadla<sup>25</sup> all entered the same plea upon their arraignment on September 27, 2019, February 4, 2020, and February 21, 2020, respectively.

On February 19, 2020, accused Lu filed an “*Omnibus Motion*” which sought, among other things, the dismissal of the present case against her on the ground of a violation of her constitutional right to speedy disposition of cases.<sup>26</sup> The prosecution filed its *Opposition*, dated February 28, 2019, thereto on March 2, 2020.<sup>27</sup> In its *Resolution* promulgated on June 30, 2020, the Court denied the said *motion* after it failed to find the existence of inordinate delay in the preliminary investigation of this case before the Office of the Ombudsman.<sup>28</sup>

<sup>17</sup> *Id.*, at pp. 498-509

<sup>18</sup> *Id.* at pp. 536-544

<sup>19</sup> *Id.*, at pp. 769-778

<sup>20</sup> *Id.*, at pp. 806-812

<sup>21</sup> *Id.*, at pp. 878-885

<sup>22</sup> *Id.*, at p. 563

<sup>23</sup> *Id.*, at pp. 640-641

<sup>24</sup> *Id.*, at pp. 916-917

<sup>25</sup> p. 84, Vol. II, Record

<sup>26</sup> pp. 934-941, Vol. I, Record

<sup>27</sup> *Id.*, at pp. 950-958

<sup>28</sup> p. 59-70, Vol. II, Record

**Decision**

People v. Fua, et al.

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During the pre-trial, the parties stipulated on the following matters:

1. The identity of accused Fua, Tomogsoc, Marchan, Jumawan and Castillon as the same persons charged under the Information in this case;
2. That at the time pertinent and material to this case, accused Fua, Tomogsoc, Marchan, Jumawan and Castillon were public officers;
3. The identity of accused Monte as the same person charged in the Information in this case;
4. That at the time pertinent and material to this case, accused Monte was a public officer being then the Municipal Accountant of Lazi, Siquijor;
5. The identity of accused Jumadla as the same person charged in the Information in this case;
6. That whenever referred to orally or in writing by the Honorable Court and the Prosecution and/or its witnesses, accused Jumadla admits that he is the same person named under the Information in this case;
7. That at the time pertinent and material to this case, accused Jumadla was a public officer;
8. That at the time pertinent and material to this case, accused Jumadla was the Municipal Planning and Development Coordinator of Lazi, Siquijor;
9. That accused Jumadla signed the "inspection" portion of the Inspection and Acceptance Report (IAR) dated April 26, 2004, Annex W of the Complaint;
10. Accused Jumadla signed the IAR dated April 26, 2004, in his capacity as *Inspection Officer*, as indicated below his signature in the same document, as of the material time involved;



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11. In the said IAR, the goods were inspected, verified, and found "OK" as to quantity and specifications by accused Jumadla;
  12. That accused Jumadla was not a member of the Bids and Awards Committee (BAC); and,
  13. The identity of accused Lu as the same person charged under the Information in this case.<sup>29</sup>

On July 22, 2021, the Court issued a *Pre-Trial Order* consistent with the "*Joint Stipulations of Facts*" filed by the parties.<sup>30</sup>

Trial thus ensued.

The prosecution presented ten (10) witnesses, namely: [1] Aileen Escobido Maqueda,<sup>31</sup> [2] Gerhard G. Basco,<sup>32</sup> [3] Cyril Tomimbang Pal-ing,<sup>33</sup> [4] Marissa A. Santos,<sup>34</sup> [5] Corazon Lenares Jerusalem,<sup>35</sup> [6] Eufemia Clemente Jaugan,<sup>36</sup> [7] Ma. Liza H. Africa,<sup>37</sup> [8] RJ A. Bernal,<sup>38</sup> [9] Carolyn G. Bastasa,<sup>39</sup> and, [10] Rowena Cervantes Reyes.<sup>40</sup>

On October 10, 2022, the prosecution filed its "*Formal Offer of Evidence*" consisting of Exhibits A, A-1 to A-61, B, B-1 to B-19, D, D-1 to D-149,<sup>41</sup> E, E-1 to E-10, G, G-1, G-2, G-1-a, I, I-1 to I-5-

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<sup>29</sup> *Id.*, at pp. 499-500

<sup>30</sup> *Id.*, at pp. 499-525

<sup>31</sup> pp. 716, Vol. III, Record

<sup>32</sup> *Id.*, at p. 716

<sup>33</sup> *Id.*, at p. 723

<sup>34</sup> p. 438, Vol. IV, Record

<sup>35</sup> *Id.*, at p. 451

<sup>36</sup> *Id.*, at p. 453

<sup>37</sup> *Id.*, at p. 485

<sup>38</sup> *Id.*, at p. 544

<sup>39</sup> *Id.*, at p. 643

<sup>40</sup> p. 5, Vol. V, Record

<sup>41</sup> D-28 to 33, 38 to 41, 66 to 82, 90 to 92, 102 to 149 not offered in evidence.



a.<sup>42</sup> These exhibits were admitted by the Court in its *Resolution* promulgated on November 11, 2022.<sup>43</sup>

Thereafter, or on November 24, 2022, accused Tomogsoc, Marchan, Jumawan, and Castillon filed a "*Motion for Leave to File Demurrer to Evidence [for Insufficiency of Evidence]*."<sup>44</sup> On November 28, 2022, accused Fua also filed a "*Motion for Leave to File Demurrer to Evidence*."<sup>45</sup> The prosecution filed its "*Consolidated Opposition (to the Motions for Leave of Court to File Demurrer to Evidence)*" on December 5, 2022.<sup>46</sup> In its *Resolution* promulgated on December 6, 2022, the Court denied the said *motions* for lack of merit. Therein, the Court gave the above-mentioned accused a period of five (5) days from receipt of the said *resolution* within which to file their respective *manifestation/s* whether they will pursue their *demurrer/s to evidence* without leave of court.<sup>47</sup>

On December 28, 2022, accused Monte filed a "*Motion to Join the Motion for Leave to File to Demurrer to Evidence of Co-Accused Fua, Tomogsoc, Marchan, Jumawan and Castillon*."<sup>48</sup> In its *Resolution* promulgated on January 4, 2023, the Court noted the said *motion* considering that the said *motions for leave to file demurrer to evidence* filed by her co-accused had already been denied by the Court in its *Resolution* promulgated on December 6, 2012.<sup>49</sup>

Subsequently, or on January 9, 2023, accused Jumadla also filed a "*Motion for Leave to File Demurrer*."<sup>50</sup> The prosecution filed its *Opposition*, dated January 19, 2023, thereto on January 23, 2023.<sup>51</sup> In its *Resolution* promulgated on even date, the Court denied the above-mentioned *motion* filed by accused Jumadla.

<sup>42</sup> pp. 14-51, Vol. V, Record

<sup>43</sup> *Id.*, at pp. 451-452

<sup>44</sup> *Id.*, at pp. 477-489

<sup>45</sup> *Id.*, at pp. 493-498

<sup>46</sup> *Id.*, at pp. 499-513

<sup>47</sup> *Id.*, at pp. 515-516

<sup>48</sup> *Id.*, at pp. 533-534

<sup>49</sup> *Id.*, at p. 537

<sup>50</sup> *Id.*, at pp. 575-580

<sup>51</sup> *Id.*, at pp. 581-592

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Likewise, it gave the said accused a period of five (5) days from receipt of the subject *resolution* within which to file his manifestation whether he will pursue his *demurrer to evidence* without leave of court.<sup>52</sup> On February 13, 2023, accused Jumadla filed a "*Manifestation to File Demurrer to Evidence.*"<sup>53</sup>

On February 7, 2023, Atty. Joseph Nolan H. Jacinto (Atty. Jacinto), counsel for accused Marchan, filed a "*Notice of Death [of accused Ivan Ypil Marchan].*" In its *Resolution* promulgated on February 8, 2023, the Court [1] noted the said "*Notice of Death*" of accused Marchan; [2] directed the prosecution to verify the alleged fact of death of the said accused, and to submit a report thereon; and, [3] held in abeyance the resolution on the prayer to dismiss the case against accused Marchan and the release of his bail bond to his surviving spouse, until the prosecution shall have confirmed the purported fact of death of the said accused.<sup>54</sup>

In its *Resolution* promulgated on February 14, 2023, the Court [1] granted accused Jumadla a period of ten (10) days from notice within which to file his *demurrer to evidence*; [2] partially granted his prayer to cancel the settings scheduled on February 22 and 23, 2023, but only with respect to him considering that he had been precluded from presenting evidence on his behalf; and, [3] held in abeyance the resolution of accused Jumadla's *demurrer to evidence* which shall be resolved by the Court simultaneously with the main decision in this case after the presentation of evidence for the other accused pursuant to Section 8, Rule VIII of the 2018 Revised Internal Rules of the Sandiganbayan.<sup>55</sup>

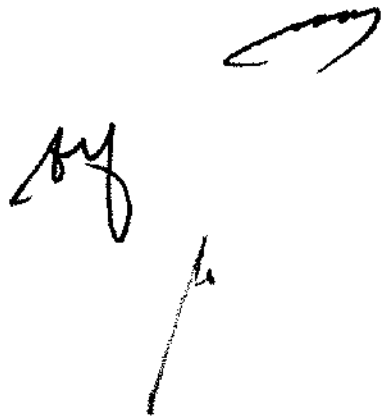
During the hearing on February 22, 2023, Atty. Jacinto, counsel for accused Tomogsoc, Marchan, Jumawan, and Castillon, manifested that in view of the untimely demise of accused Marchan, he will no longer present any witness for the above-mentioned accused as accused Marchan was supposed to be his only witness. The said *manifestation* was joined by Atty. Lawrence

<sup>52</sup> *Id.*, at pp. 594-595

<sup>53</sup> *Id.*, at pp. 614-616

<sup>54</sup> *Id.*, at p. 606

<sup>55</sup> *Id.*, at p. 618

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Salting (Atty. Salting), counsel for accused Fua. Thereafter, the Court set the reception of evidence for accused Lu on March 13, 2023.<sup>56</sup>

On March 12, 2023, accused Jumadla filed his "*Demurrer to Evidence*."<sup>57</sup> The prosecution filed its *Opposition* dated March 13, 2023, on March 13, 2023.<sup>58</sup>

At the scheduled hearing on March 13, 2023, Atty. Abelardo Albis, Jr. (Atty. Albis, Jr.), counsel for accused Lu, moved for the cancellation of the hearing on the ground that he found it difficult to finalize the Judicial Affidavit of accused Lu due to the distance between Manila and Siquijor where the said accused is currently residing. The Court granted the said *motion* and reset the hearing on March 27, 2023, and April 13, 2023.<sup>59</sup>

On March 27, 2023, Atty. Albis, Jr., informed the Court that he was not ready to present evidence. Thus, he moved for the cancellation of the hearing scheduled on that day. When asked for comment, the prosecution did not interpose any objection thereto provided that the next setting shall be intransferable in character. Accordingly, the Court set the presentation of evidence for accused Lu on April 13, 2023.

During the said scheduled hearing, Atty. Charina C. Robles (Atty. Robles), counsel for accused Monte, manifested in open court that the said accused was waiving her right to present evidence which the Court noted in its *Order* dated March 27, 2023.<sup>60</sup>

On March 27, 2023, accused Monte likewise filed a written "*Manifestation*"<sup>61</sup> with a *motion* to admit the attached "*Memorandum (for accused Monte)*."<sup>62</sup> In its *Resolution* promulgated on March 28, 2023, the Court noted the said *manifestation with*

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<sup>56</sup> p. 10-11, Vol. VI, Record

<sup>57</sup> pp. 16-26, Vol. VI, Record

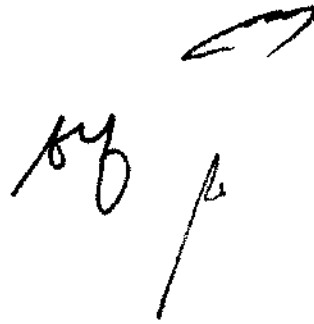
<sup>58</sup> *Id.* at pp. 30-48

<sup>59</sup> *Id.*, at p. 27

<sup>60</sup> *Id.*, at p. 49

<sup>61</sup> *Id.*, at pp. 51-53

<sup>62</sup> *Id.*, at pp. 54-71

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motion to admit attached memorandum and declared that the admission/non-admission of the said motion is premature since the defense has yet to conclude the presentation of its evidence.<sup>63</sup>

During the hearing on April 13, 2023, accused Lu and her counsel, Atty. Albis, failed to appear despite notice. Thus, the prosecution moved that the presentation of evidence for accused Lu be considered waived. After a review of the records, the Court found merit in the motion of the prosecution. Accordingly, it declared accused Lu to have waived her right to present evidence since she failed to present any witness despite the warnings given her and her counsel by the Court in the two (2) previous trial dates.<sup>64</sup> Thus, in its Order dated April 13, 2023, the Court submitted the present case for decision considering that all the accused did not present any documentary evidence.<sup>65</sup>

On April 20, 2023, accused Tomogsoc, Jumawan, and Castillon filed a "Manifestation [Adopting the Memorandum dated 24 March 2023 of Accused Monte with Additional Arguments]."<sup>66</sup> Thereafter, or on April 24, 2023, accused Fua filed a similar manifestation adopting the said memorandum filed by accused Monte, and submitting therein additional arguments.<sup>67</sup> In its Resolution promulgated on April 28, 2023, the Court [1] admitted the "Memorandum" filed by accused Monte on March 27, 2023, in the interest of substantial justice; [2] noted the "Manifestation (Adopting the Memorandum dated 24 March 2023 of Accused Monte with Additional Arguments)" filed by accused Tomogsoc, Jumawan, and Castillon on April 20, 2023; [3] noted the "Manifestation (Adopting the Memorandum filed by Accused Monte dated 24 March 2023, with Additional Arguments for Accused Fua)" filed by accused Fua on April 24, 2023; [4] re-submitted the present case for decision and the resolution of the "Demurrer to Evidence" filed by accused Jumadla on March 3, 2023; and [5] directed the prosecution to comply with the Court's Order dated March 13,

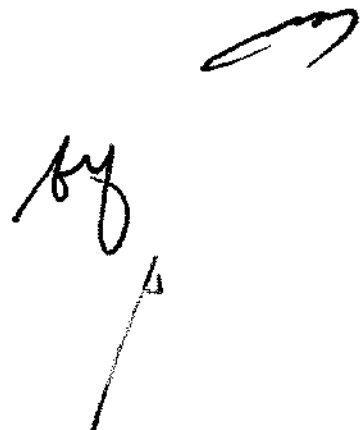
<sup>63</sup> *Id.*, at p. 73

<sup>64</sup> *Id.*, at p. 104

<sup>65</sup> *Id.*, at pp. 104-105

<sup>66</sup> *Id.*, at pp. 106-108

<sup>67</sup> *Id.*, at pp. 109-113

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2023, regarding the confirmation of the alleged fact of death of accused Marchan.<sup>68</sup>

**THE PROSECUTION'S EVIDENCE**

***Aileen Escobido Maqueda***

The prosecution first presented Aileen Escobido Maqueda (Maqueda) who testified through her Judicial Affidavit dated April 11, 2022.<sup>69</sup>

She averred that she is currently an Associate Graft Investigation Officer (AGIO) III and designated as Administrative Officer at the Field Investigation Office (FIO) of the Office of the Ombudsman; in connection with her official functions, she received several documents relative to the present case; she issued certified photocopies of the said documents which were marked as Exhibits A-1 to A-61, together with their respective sub-markings, by the prosecution. According to her, these documents were the attachments to the *Complaint-Affidavit* filed in Case No. OMB-C-C-16-0381 entitled "*FIO rep. by: Gehrard G. Basco, AGIO III v. Eduardo B. Lecciones, Jr., et al.*" and was marked as Exhibit A in this case.<sup>70</sup>

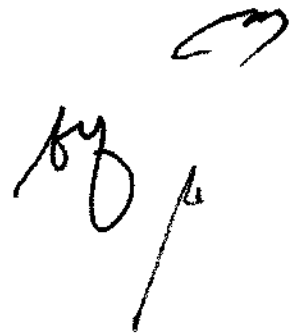
Witness Maqueda further recalled that her office received several documents from a certain Gerhard Basco; that upon receipt thereof, her office compiled and arranged them into various folders and, thereafter, caused their reproduction; that they affixed a stamp on each page thereof which reads: "*Certified Photocopy of Document on File;*" that she signed each page of the said documents; and, that her office reproduced the documents that

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<sup>68</sup> *Id.*, at pp. 117-119

<sup>69</sup> pp. 574-986, Vol. II, Record

<sup>70</sup> *Id.*, at pp. 574-575

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were attached to the *Complaint* filed by the FIO in Case No. OMB-C-C-16-0381.<sup>71</sup>

She then identified the said documents, which were marked as Exhibits A-1 to A-61, to be the faithful reproductions of the original copies on file in her office.<sup>72</sup>

On cross-examination, witness Maqueda admitted that she does not have any personal knowledge as to the authenticity and due execution of the said documents; that she does not know whether the same were fabricated; and, that she was not part of the field investigators that conducted the fact-finding investigation in this case.<sup>73</sup>

The said witness further reiterated that the original copies of the said documents are with the Office of the Special Prosecutor; the same are part of the annexes of the *Complaint* in this case; and, they were marked as exhibits for the prosecution.<sup>74</sup>

On questions from the Court, witness Maqueda stated that a certain Gerhard Basco, together with another individual, conducted the investigation in this case.<sup>75</sup>

According to the same witness, the documents that she received from Basco contained some original copies and some certified true copies; that she did not verify from Basco regarding the source of the said documents; that a *Complaint* was already included in the files that she received from Basco; that she did not look into the details of each of the documents; and, that she did not make any determination that the filing of a *Complaint* was proper.<sup>76</sup>

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<sup>71</sup> *Id.*, at pp. 576-577

<sup>72</sup> *Id.*, at pp. 577-584

<sup>73</sup> p. 14, TSN, May 24, 2022

<sup>74</sup> *Id.*, at pp. 16-17

<sup>75</sup> *Id.*, at p. 20

<sup>76</sup> *Id.*, at pp. 23-26

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Moreover, she admitted that the above-mentioned documents are not all original copies; and, that she failed to include a copy of the *Complaint* in this case as part of the Annexes of her Judicial Affidavit.<sup>77</sup>

**Gerhard G. Basco**

The prosecution next presented Gerhard G. Basco (Basco) who also testified through his Judicial Affidavit dated June 29, 2016.<sup>78</sup>

Witness Basco declared that he is currently an Associate Graft Investigation Officer (AGIO) III of the Field Investigation Office (FIO) of the Office of the Ombudsman; that in relation to his official functions, that he reviewed the records of the fact-finding investigation conducted on the procurement of fertilizers relative to the "*Farm Inputs/Farm Implements Program*" of the Municipality of Lazi, Siquijor;<sup>79</sup> and, that the said records included, among others things, the Personal Data Sheets (PDS) of officials and employees of the Municipality of Lazi, various documents from the municipality's Bids and Awards Committee (BAC), Disbursement Vouchers (DVs), and other supporting documents.<sup>80</sup>

The said witness also stated that during his investigation, he found that the mayor of the Municipality of Lazi, its other officials and employees, together with the representatives of Mangopina Trading Inc. (Mangopina), caused gross disadvantage to the government when they entered into a contract for the supply of "*MRG Liquid Fertilizers*" and "*Del Gro Super Foliar Fertilizers*" to the said municipality. Thus, he executed a *Complaint* recommending, among other things, the conduct of a preliminary investigation for a possible Violation of Section 3 (e) of Republic Act (R.A.) No. 3019, as amended, against the said mayor and the concerned officials of the municipality and the representatives of Mangopina. According

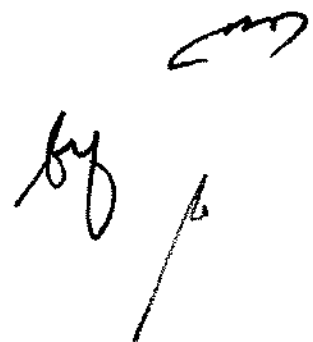
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<sup>77</sup> *Id.*, at p. 35

<sup>78</sup> pp. 9-14, Vol. III, Record

<sup>79</sup> p. 10, Vol. III, Record

<sup>80</sup> *Id.*, at p. 11

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to him, he submitted the said *Complaint* and its attachments to the Preliminary Investigation Administrative Adjudication and Monitoring Office (PAMO) of the Office of the Ombudsman.<sup>81</sup>

He then identified the *Complaint* dated June 19, 2016, consisting of eighteen (18) pages with Annexes A to GG, marked as Exhibits A to A-61, to be the same documents that he prepared in relation to the above-mentioned investigation.<sup>82</sup>

On cross-examination, witness Basco stated the said *Complaint* was based on the findings of the fact-finding investigation; that most of the documents that he gathered came from the Commission on Audit (COA) and the Securities and Exchange Commission (SEC). However, he admitted that he did not personally conduct the fact-finding investigation in this case.<sup>83</sup>

He further revealed that it was a certain Moses Buzmion who conducted the fact-finding investigation in relation to the subject transaction; that he only reviewed the records submitted to him by Buzmion; that he was named the nominal complainant in this case because he was designated as the group coordinator of *Task Force Abono*; and, that the findings of the Senate in its investigation of the "*Fertilizer Fund Scam*" was also considered by his team.<sup>84</sup>

According to the same witness, his office waited for the conclusion of the above-mentioned Senate investigation before his team gathered the documents related to this case; that his office requested several documents from the Municipality of Lazi in relation to the subject transactions; and, that all the records pertaining to their investigation are kept in their administrative office.<sup>85</sup>

Moreover, witness Basco clarified that he did not attach the records that he reviewed during his investigation to his Judicial

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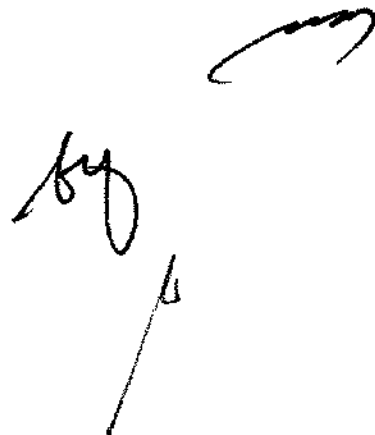
<sup>81</sup> *Id.*, at p. 12

<sup>82</sup> *Id.*, at p. 12

<sup>83</sup> *Id.*, at pp. 41-42

<sup>84</sup> *Id.*, at pp. 48-51

<sup>85</sup> *Id.*, at pp. 45-46

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Affidavit because he was only asked in the said Judicial Affidavit about the records that he reviewed, and he answered in general terms; that he does not have any personal knowledge of the transaction involved in this case;<sup>86</sup> and, that he has no personal knowledge on the alleged participation of the representatives of Mangopina in the subject transaction.<sup>87</sup>

The said witness also clarified that he began to review the records of this case sometime in 2016, or when he was appointed as AGIO III; that there is no document in this case which he personally gathered; and, that his theory that the accused herein acted in conspiracy with one another was based only on the documents submitted to him.<sup>88</sup>

On another point, the same witness also declared that he has conducted about one hundred (100) fact-finding investigations since he joined the Office of the Ombudsman. According to him, most of the cases that he filed were tried by the court, and some were dismissed outright due to the lack of witnesses.<sup>89</sup>

On questions from the Court, witness Basco reiterated that the subject transaction was investigated by a certain Moses Buzmion; that it was Buzmion who communicated with the Municipality of Lazi in relation to the transaction in issue; that Buzmion prepared an investigation report which he (Basco) reviewed; and, that he (Basco) prepared the *Complaint* in this case and submitted it to Assistant Ombudsman Joselito Pangon; and, that it was Pangon who recommended the conduct of a preliminary investigation.<sup>90</sup>

Also, witness Basco testified that his office found that the documents submitted by the Municipality of Lazi to the COA were incomplete; that there were no documents showing that the municipality invited bidders or suppliers from nearby provinces or towns, or that the same was posted or published in a newspaper of

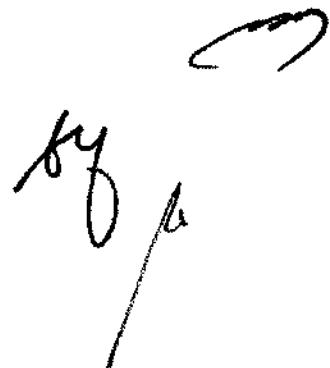
<sup>86</sup> *Id.*, at pp. 46-47

<sup>87</sup> *Id.*, at p. 66

<sup>88</sup> *Id.*, at pp. 51-60

<sup>89</sup> *Id.*, at pp. 43-44

<sup>90</sup> *Id.*, at pp. 67-70

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general circulation considering that the cost of the subject project exceeds Php2,000,000.00.<sup>91</sup>

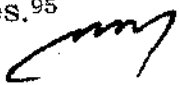
Finally, he declared that his output as the team leader or group coordinator is still subject to the review of the Assistant Ombudsman, and it is the Assistant Ombudsman who approves or disapproves his recommendation.<sup>92</sup>

**Cyril Tomimbang Pal-ing**

The next witness presented by the prosecution was Cyril Tomimbang Pal-ing (Pal-ing) who also testified through his Judicial Affidavit dated May 16, 2022.<sup>93</sup>

Witness Pal-ing averred that he is currently a State Auditor III of the Commission on Audit (COA) and is also the Acting Audit Team Leader of Audit Team No. LGS-E-TR7-11 since July 1, 2014.<sup>94</sup>

The same witness declared that the government agencies included in the audit jurisdiction of Audit Team No. LGS-E-TR7-11 includes the Municipalities of Larena, Lazi, Maria, and Siquijor. According to witness Pal-ing, part of his duties and responsibilities includes the conduct of post audit of accounts; make an assessment as to the compliance of existing audit rules and regulations; custodian of all documents related to the audit of accounts under his jurisdiction; issues an Audit Observation Memorandum (AOM), signs the AOM prepared by his team members; reviews the draft of Annual Audit Reports (AARs); and, complies with subpoenas and requests for documents from government agencies.<sup>95</sup>



<sup>91</sup> *Id.*, at p. 71

<sup>92</sup> *Id.*, at p. 71

<sup>93</sup> pp. 162-174, Vol. III, Record

<sup>94</sup> *Id.*, at p. 164

<sup>95</sup> *Id.*, at p. 164





He recounted that in connection with his official functions, he received two (2) subpoenas from the Office of the Special Prosecutor (OSP) directing him to submit the original and certified true copies of the originals of the AOMs, management comments, rejoinders, audit reports, notices of suspension/disallowance, disbursement vouchers, and all other documents in relation to the special audit of the procurement by the Municipality of Lazi of "MRG Liquid Fertilizers" and "Del Gro Super Foliar Fertilizers." He declared that after receiving the first subpoena, he photocopied all the said documents and stamped the same with the words: "certified true copy from original" or "certified true copy from office file." He identified these documents as those marked as Exhibits D to D-149 in this case.<sup>96</sup>

On the second subpoena that he received, witness Pal-ing mentioned that he was directed by the Office of the Ombudsman to appear for a case conference on February 21, 2020. According to him, he was asked to compare the *original/source documents* with those documents that were submitted by his office to Office of the Ombudsman. He identified these documents as those marked as Exhibits E to E-10.<sup>97</sup>

Lastly, he confirmed that the original copies of the said documents are kept in his office.<sup>98</sup>

On cross-examination, witness Pal-ing stated that the documents that he submitted to the Office of the Ombudsman came from the previous audit team leader. Moreover, he attested to the authenticity of the said documents and declared that he has personal knowledge of the truthfulness of the same because he was already with the COA when the procurement in issue transpired.<sup>99</sup>

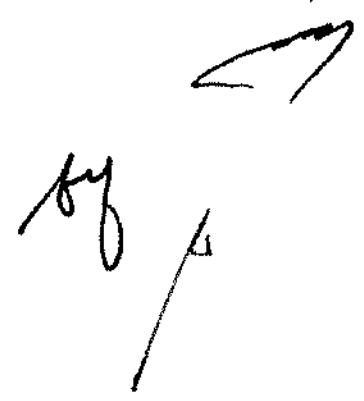
The said witness further revealed that when he received the said documents, there were other documents that were not included in the list of documents turned over to him. Thus, he

<sup>96</sup> *Id.*, at p.165-170

<sup>97</sup> *Id.*, at p. 171

<sup>98</sup> *Id.*, at p. 172

<sup>99</sup> pp. 10-12, TSN, May 26, 2022

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made an updated list to include those documents that were not included in the original list of documents.<sup>100</sup> He also explained that there was no list of documents attached to the above-mentioned subpoena that he received from the Office of the Ombudsman, and, what were attached thereto were photocopies of the disbursement vouchers and other related documents to the transaction in issue. He reiterated that after locating the subject documents, he prepared his own list and sent it to the Office of the Ombudsman.<sup>101</sup>

Lastly, witness Pal-ing confirmed that there was already a case filed against the herein accused with the Office of the Ombudsman when he received the above-mentioned subpoenas.<sup>102</sup>

***Marissa A. Santos***

The prosecution next presented Marissa A. Santos (Santos) as its next witness who also testified through her Judicial Affidavit dated May 26, 2022.<sup>103</sup>

Witness Santos stated that she is currently the Chief Administrative Officer of the Central Records Division (CRD) of the Department of Budget and Management (DBM). She recalled that in relation to this case, she received a subpoena from the Office of the Ombudsman directing her office to submit certified true copies of the following documents, namely: [1] Special Allotment Release Order (SARO) No. E-04-00164 dated February 3, 2004, [2] SARO No. E-04-00156 dated February 3, 2004; [3] Notices of Cash Allocation (NCA), and other documents related to the said SAROs.<sup>104</sup>

According to witness Santos, a certain Thea Marie Corinne F. Palarca, Director of the Administrative Service of the DBM,

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<sup>100</sup> *Id.*, at p. 15

<sup>101</sup> *Id.*, at p. 27

<sup>102</sup> *Id.*, at p. 33

<sup>103</sup> pp. 538-547, Vol. III, Record

<sup>104</sup> *Id.*, at p. 540

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submitted the authenticated photocopies of the above-mentioned documents to the Office of the Ombudsman. She identified the said documents as the same documents marked as Exhibits B to B-18 in this case.<sup>105</sup>

She further explained that her office failed to produce SARO No. E-04-00156 dated February 3, 2004, the NCA, and all other documents related to the said SARO, despite several days of searching. Thus, she issued a *Certification* dated August 7, 2019, attesting to the truth of the said circumstance.<sup>106</sup>

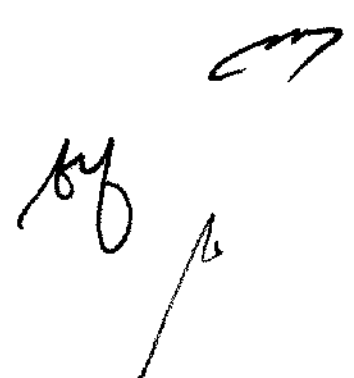
Moreover, she explained that the DBM only has on file receiving copies of the following documents, namely: SARO No. E-04-00164 dated February 3, 2004, Advice of SARO Issued dated February 3, 2004, Annex A-NCA-222447-1 dated February 3, 2004, Advice of NCA Issued (ANCAI) dated February 3, 2004, NCA-222771-3 dated April 5, 2004, ANCAI dated April 5, 2004, NCA-222922-0 dated April 28, 2004, ANCAI dated April 28, 2004, NCA-222942-6 dated May 4, 2004, ANCAI dated May 4, 2004, NCA-243838-0 dated November 30, 2004 and ANCAI dated November 30, 2004, because the Central Processing and Releasing Unit (CPRU) under the Budget and Technical Bureau (BTB) of the DBM releases the original agency copy of a SARO to the named implementing agency, while the ANCAI is released to the addressee. She also added that original copies of the NCAs are with the Land Bank of the Philippines (LBP).<sup>107</sup>

On cross-examination, witness Santos clarified that she supervised the photocopying of the above-mentioned documents which were submitted to the Office of the Ombudsman; she does not have any personal knowledge as to the transactions mentioned in the said documents; the original copy of SARO No. E-04-00156 dated February 3, 2004, and all other documents pertaining to it are not in the possession of the DBM because it cannot be located; the original copies of the subject SAROs and ANCAIs are with the

<sup>105</sup> *Id.*, at pp. 541-542

<sup>106</sup> Marked as Exhibit B-19

<sup>107</sup> *Id.*, at pp. 544-545



Department of Agriculture (DAR) and the LBP, respectively, but she is unsure if the DAR or the LBP still has the possession of the said documents at the present time.<sup>108</sup>

On questions from the Court, witness Santos testified that she did not verify with the DAR and LBP whether it currently has possession of the original copies of the above-stated documents.<sup>109</sup>

### **Corazon Lenares Jerusalem**

The prosecution then presented Corazon Lenares Jerusalem (Jerusalem) who also testified through her Judicial Affidavit dated May 26, 2022.<sup>110</sup>

Witness Jerusalem declared that she is currently a State Auditor III of the Commission on Audit (COA) and is currently the audit team leader of Team 10. This team has audit jurisdiction over the Province of Siquijor and the municipalities of Villanueva and San Juan, Siquijor. She also stated that in connection with her official functions, she issued Audit Observation Memorandum (AOM) No. 2004-002(300) dated October 8, 2004,<sup>111</sup> wherein she observed some deficiencies regarding the procurement of fertilizers by the Municipality of Lazi from Mangopina. She recounted that she reviewed Disbursement Voucher (DV) No. 300-0405-004 dated May 7, 2004, and all its attachments before issuing the said AOM.<sup>112</sup>

She specified the deficiencies mentioned in the said AOM, namely: [1] a copy of the allotment advice or the Sub Allotment Release Order on the release of the fund was not attached to the DV; [2] there were deficiencies on the procurement process; [3] there were discrepancies noted in the documents submitted by the

<sup>108</sup> pp. 16-24, TSN, May 31, 2022

<sup>109</sup> *Id.*, at pp. 28-30

<sup>110</sup> pp. 743-759, Vol. III, Record

<sup>111</sup> Marked as Exhibit D-6

<sup>112</sup> *Id.*, at pp. 747-749

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winning bidder; [4] there were inconsistencies on the addresses of Mangopina; [5] there were no documents attached to the subject DVs which would show that the procurement of the subject fertilizers passed the requirements of R.A. No. 9184 and its implementing rules and regulations; [6] the business permit of Mangopina already expired at the time of the procurement in 2004; [7] the documents it submitted for post-audit were valid only up to December 31, 2001; [8] the license issued by the Fertilizer and Pesticide Authority (FPA) of the Department of Agriculture to Mangopina expired in 2002; and, [9] the Certificate of Product Registration issued by the FPA to Mangopina expired on July 27, 2002.<sup>113</sup>

The said witness also stated that she received the comments of the municipality on November 9, 2004. She recalled that there were documents that were attached to the said comments, and these were marked as Exhibits D-26, D-27, D-34, D-51, D-52, D-94, D-95, D-96, and D-97 in this case. She clarified, however, that the said comments did not correct the above-mentioned deficiencies she mentioned in her AOM.<sup>114</sup>

On cross-examination, witness Jerusalem testified that she conducted her post audit in relation to the subject transaction sometime in September or October 2004 because she assumed her role as audit team leader of Team 2 only on August 2004; that it took her one (1) week to conduct a post audit and issue AOM No. 2004-002(300) dated October 8, 2004; that she gave copies of the said AOM to the public officials involved in this case; that there is no proof that accused Fua received a copy of the said AOM; that there is a typographical error on the control number of the subject AOM; that based on the said AOM, she required the municipality to submit its comments on her observations; that the said AOM did not determine whether accused Fua was criminally liable in the subject transactions; and, that she did not conduct any exit conference pertaining to the subject transaction.<sup>115</sup>

<sup>113</sup> *Id.*, at p. 752-753

<sup>114</sup> *Id.*, at p. 755

<sup>115</sup> pp. 19-27, TSN, June 2, 2022.

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On another point, she explained that a local government unit cannot start a procurement process without first receiving a copy of a Special Allotment Release Order (SARO) because a SARO is its authority to incur an obligation. She mentioned that at the time of the questioned procurement, there was no SARO issued to support the fertilizer program of the municipality; and, the municipal accountant was not able to furnish their office a copy of a SARO.<sup>116</sup>

Furthermore, she noted that the municipality corrected some of the deficiencies that she found in the said AOM, *i.e.*, the observation no. 3 which relates to the submission of the updated business permit, Fertilizer and Pesticide Authority (FPA) license of Mangopina, and the Certificate of Registration issued by the Fertilizer and Pesticide Authority. However, that did not fully correct the other deficiencies that were found therein.<sup>117</sup>

The same witness also recalled that a certificate of disbursement is usually submitted to them by the concerned official of an agency for verification. Thereafter, it will be forwarded to the source agency, which in this case is the DAR, because the said certificate will be needed by the DAR for liquidation purposes. However, she clarified that the said certificate is not proof of liquidation but is only a requirement for liquidation.<sup>118</sup>

Witness Jerusalem also mentioned that she conducted her post audit based on the comments and documents submitted to her by the municipality; that she did not interview accused Marchan, Jumawan, Castillon, and Tomogsoc, regarding the subject transaction;<sup>119</sup> that based on the documents that she received, the subject procurement involved three (3) bidders; that the contract in issue was awarded to Mangopina; that the items were delivered on April 26, 2004; that her findings were reduced into writing and were contained in AOM No. 2004-002(300); and, that there were several documents concerning the said procurement that were lacking which she mentioned in the said

<sup>116</sup> *Id.*, at p. 28

<sup>117</sup> *Id.*, at pp. 28-31

<sup>118</sup> *Id.*, at pp. 30-34

<sup>119</sup> *Id.*, at pp. 37-40

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AOM. Nevertheless, she admitted that she did not require the BAC members and BAC Secretariat to submit the above-mentioned documents.<sup>120</sup>

Moreover, she testified that the audit which she conducted on the Municipality of Lazi was part of a routine post audit; that the documents she examined were original copies, except for the business permits; that the said AOM was addressed to accused Fua, Monte, and Tomogsoc in their capacities as mayor, municipal accountant, and municipal treasurer, respectively, of the Municipality of Lazi; that she requested the said accused for their comments; that she noted in the said AOM that the procurement of the subject fertilizers did not comply with the provisions of R.A. No. 9184; and, that the said AOM pertained only to the above-mentioned government officials' non-compliance of R.A. No. 9184.<sup>121</sup>

On re-direct examination, witness Jerusalem explained that an exit conference is usually conducted by her team when they have substantiated their adverse findings and/or observations; that there was no exit conference in this case because at that time, there was not enough evidence to conduct a conference; hence, her office only issued an AOM to require the management to comment on their findings; and, that she did not interview the BAC members and secretariat on the alleged missing documents because she believed that the same were in the possession of the municipal accountant.<sup>122</sup>

On re-cross examination, witness Jerusalem revealed that she did not furnish the BAC a copy of the subject AOM.<sup>123</sup>

On questions from the Court, the same witness explained that an AOM is prepared after a conduct of a post-audit, and that her office issues an AOM after deficiencies are noted in their post-audit; that an allotment advice is the authority of a procuring entity to

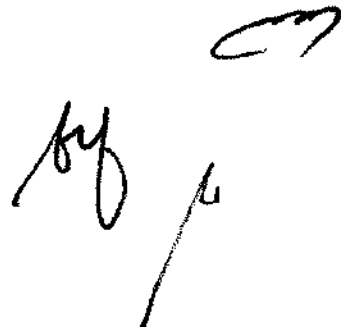
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<sup>120</sup> *Id.*, at pp. 40-41

<sup>121</sup> *Id.*, at pp. 47-50

<sup>122</sup> *Id.*, at pp. 51-53

<sup>123</sup> *Id.*, at pp. 53-54

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incur an obligation; that in the absence thereof, there will be no fund allocated to the said agency for a particular transaction; that no allotment advice and SARO were attached to the Memorandum of Agreement (MOA) that was submitted by the municipality to the Audit Team; that there was no proof that the municipality conducted a pre-bid conference; that there were no documents submitted to show that the subject procurement underwent advertisement; and, that there were no documents showing that the bidders submitted their bid security.<sup>124</sup>

Furthermore, she testified that the municipal accountant of the said municipality submitted a business permit of Mangopina with expiration date December 31, 2004;<sup>125</sup> a license issued by the Fertilizer and Pesticide Authority (FPA) permit with expiration date April 21, 2002;<sup>126</sup> and a Certificate of Product Registration with expiration date January 26, 2006.<sup>127</sup> However, she maintained that there were inconsistencies on the addresses of Mangopina, and that the municipality failed to submit a SARO to support the subject transaction.<sup>128</sup>

Furthermore, she revealed that she did not have any findings in the subject AOM regarding the alleged "*premature issuance of a Purchase Request,*" or "*reference to brand names,*" or "*lack of performance of security bond*" or "*lack of proof of project implementation.*"<sup>129</sup>

Finally, witness Jerusalem narrated that a notice of disallowance will be issued after the management fails to fully comply with the deficiencies mentioned in an AOM; that the accountable officer is given a period of six (6) months from receipt of an AOM within which to settle the disallowance; and, that if the disallowance is settled, the COA will issue a notice of settlement. However, the Notice of Settlement does not preclude any legal

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<sup>124</sup> *Id.*, at pp. 57-66

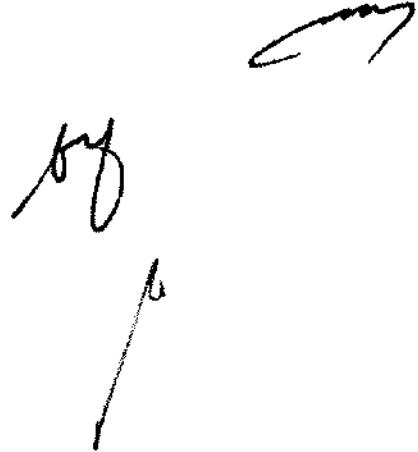
<sup>125</sup> *Id.*, at p. 60

<sup>126</sup> *Id.*, at p. 61

<sup>127</sup> *Id.*, at p. 61

<sup>128</sup> *Id.*, at pp. 57-66

<sup>129</sup> *Id.*, at pp. 67-68

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action that may be taken by the Office of the Ombudsman regarding the filing of a criminal or administrative case against an accountable public officer; should the accountable public officer fail to settle the disallowance within the given period, the ND will be final and executory and he/she will no longer be allowed to settle it and there will be legal actions taken against him/her.<sup>130</sup>

***Eufemia Clemente Jaugan***

Eufemia Clemente Jaugan (Jaugan) was the next witness for the prosecution. She likewise testified through her Judicial Affidavit dated May 31, 2022.<sup>131</sup>

She averred that she was assigned as the Audit Team Leader of the Commission on Audit (COA) with audit jurisdiction over the Municipality of Lazi, Siquijor from August 15, 2005, to July 31, 2009. She recalled that in connection with her official functions, she received a subpoena from the Office of the Ombudsman requesting for the audit report on the utilization of the Php8,000,000.00 allocation of the Province of Siquijor from the "Fertilizer Fund." According to her, she submitted the said audit report to the Office of the Ombudsman.<sup>132</sup>

Witness Jaugan narrated her audit findings in the said audit report, to wit:

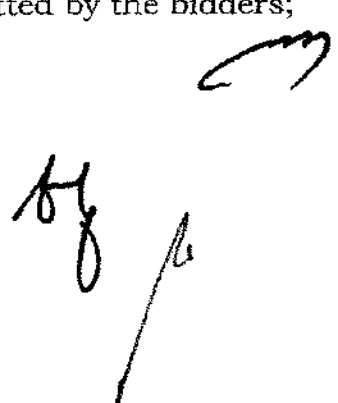
1. R.A. No. 9184 was not strictly complied with by the Bids and Awards Committee (BAC) of the municipality;
2. There was no bid security submitted by the bidders;

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<sup>130</sup> *Id.*, at pp. 72-74

<sup>131</sup> pp. 135-154, Vol. IV, Record

<sup>132</sup> *Id.*, at pp. 138-139; Marked as Exhibit E-4 to E-10



3. The document to support the delivery of fertilizers was only through a Delivery Receipt and not through the required invoice;
4. The Certificate of Registration issued by the DTI to Mangopina Trading is valid only at the business address indicated which is 1238 EDSA, Apolinario Samson, Quezon City, Metro Manila, and would no longer be valid if [the] address is in San Pablo City, Laguna; and,
5. There were differences noted between the two Certificates of Product Registration issued by the FPA.<sup>133</sup>

She further recalled that after she prepared the said audit report, she requested the Legal and Adjudication Office (LAO) of the COA Regional Office No. VII to conduct further evaluation and review on the subject transaction. Thereafter, the LAO submitted its "Indorsements."<sup>134</sup> She clarified that she did not issue a notice of disallowance after receiving the said "Indorsements" from the LAO because she was expecting an advice that the subject procurement was contrary to law which makes the said transaction illegal.<sup>135</sup>

The said witness also mentioned that she cannot determine if the subject funds were used as intended based solely on the unconfirmed/unverified utilization report submitted by the municipal agricultural officer. She pointed out that there were pages in the submitted distribution list which were unclear; hence, she cannot identify or trace the names of the recipients and the *barangays* where they belong.<sup>136</sup>

On cross-examination, witness Jaugan reiterated that she prepared an audit report in relation to this case; that the said audit report was complete and accurate; that the same was based on the

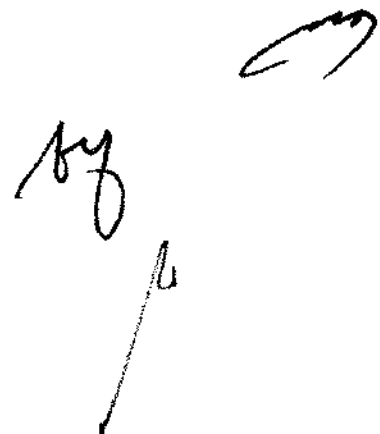
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<sup>133</sup> *Id.*, at p. 145

<sup>134</sup> Marked as Exhibit E and E-1

<sup>135</sup> *Id.*, at pp. 150-151

<sup>136</sup> *Id.*, at p. 151

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documents submitted to her office which included, among other things, the AOM dated October 8, 2004, prepared by witness Jerusalem; that the Municipality of Lazi was asked in writing, through the AOM issued by the previous auditor, to submit its comment on the deficiencies found; that she does not know if an invoice was attached to the subject disbursement voucher because it was the previous auditor who prepared the AOM; that she cannot verify the data reflected in the subject distribution list submitted by the municipal agricultural officer of the Municipality of Lazi because the said data was unclear; and, that the documents attached to her Judicial Affidavit, which included the said audit report, were certified by witness Pal-ing.<sup>137</sup>

Witness Jaugan further admitted that she did not make any findings as to the “*reference to brand names,*” or the “*lack of performance security bond,*” supposedly made by the accused in this case. Also, she stated that she did not make any findings on the alleged liability of accused Fua.<sup>138</sup>

Moreover, witness Jaugan reiterated that she indorsed the said report to the LAO of the COA Regional Office VII with a recommendation for the possible issuance of a notice of disallowance. However, she did not issue a notice of disallowance right away because she was waiting for the advice of the LAO that the subject transaction was illegal.<sup>139</sup>

She further stated that the Municipality of Lazi was not furnished a copy of the said report;<sup>140</sup> that she did not submit a copy of the said audit report to the COA main office;<sup>141</sup> and, that she did not prepare the documents attached to her Audit Report. However, she insisted that based on her findings, a notice of disallowance should have been issued regarding the subject transaction.<sup>142</sup> Nevertheless, she clarified that there was no notice

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<sup>137</sup> pp. 40-48, TSN, June 7, 2022

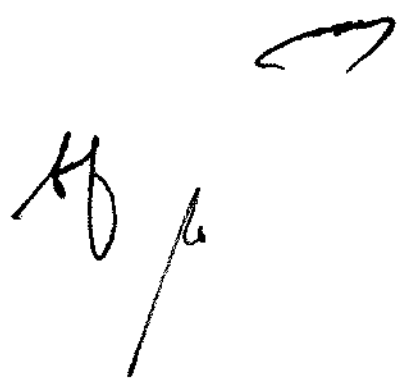
<sup>138</sup> *Id.*, at p. 49

<sup>139</sup> *Id.*, at p. 50

<sup>140</sup> *Id.*, at p. 53

<sup>141</sup> *Id.*, at p. 55

<sup>142</sup> *Id.*, at p. 58

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of disallowance issued by the LAO of the COA with respect to the transactions subject of her audit report.<sup>143</sup>

On redirect examination, the same witness further explained that she did not personally interview accused Fua regarding her findings on the said audit report because she was not the auditor when the subject transaction transpired; and, that she did not submit a copy of the subject audit report to the COA because when she assumed her role as auditor in 2005, her office was still gathering and/or reviewing the related documents.<sup>144</sup>

On re-cross examination, witness Jaugan reiterated that she did not file or submit a report to the COA because the audit was not yet completed at that time.<sup>145</sup>

On questions from the Court, witness Jaugan mentioned that the distribution list is the only document that will determine whether the funds in issue were used as intended, and she cannot confirm the contents of the said list because the municipality did not submit the other supporting documents. Thus, she concluded at the time of the post audit that there was no report of utilization.<sup>146</sup>

Moreover, she admitted that she personally prepared the said audit report, and that the findings in the said report were based on an earlier audit that was conducted by the auditor who preceded her.<sup>147</sup>

However, she clarified that while she prepared her audit report on May 29, 2006, she was still not through with verifying her findings therein at that time. Thus, it took her seven (7) months to write a letter to the regional cluster director of the Legal and Adjudication Office (LAO) of the COA Regional Office No. VII requesting for a possible issuance of a ND because there were

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<sup>143</sup> *Id.*, at p. 59

<sup>144</sup> *Id.*, at 59-60

<sup>145</sup> *Id.*, at p. 61

<sup>146</sup> *Id.*, at pp. 64-65

<sup>147</sup> *Id.*, at p. 66

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several audits that she conducted after she prepared the above-mentioned audit report, namely: *the confirmation from the bidders; their existence if they are qualified; and the confirmation of their addresses.*<sup>148</sup>

Also, she mentioned that she failed to submit the said audit report to her superiors for their review due to lack of time. She reiterated that she asked the LAO for its comment, but it returned the said audit report to her without any advice or action. Thereafter, she submitted the said audit report to the Ombudsman.<sup>149</sup>

The same witness also declared that she also used as basis in the preparation of the said audit report the AOM prepared by witness Jerusalem; and, that she was able to arrive at the same findings as witness Jerusalem. However, she mentioned that she was able to come up with additional findings regarding the transaction in issue, namely: *[1] there was no pre-qualification of the bidders, [2] the lack of registration with the DTI of Estereja Store, the inconsistencies in the addresses of Mangopina Trading, and [3] the owner of the Gelly Store denied that its store participated in the subject bidding.*<sup>150</sup>

Lastly, she restated that she did not make any finding in her audit report regarding the alleged *"premature issuance of a Purchase Request,"* or *"reference to brand names,"* or the *"lack of performance security bond."* The said witness insisted that she made a finding on the lack of proof of project implementation. However, she admitted the said finding cannot be found in the subject audit report because it was deleted.<sup>151</sup>

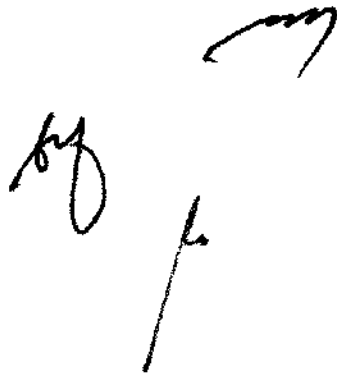
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<sup>148</sup> *Id.*, at p. 66

<sup>149</sup> *Id.*, at p. 68

<sup>150</sup> *Id.*, at pp. 69-73

<sup>151</sup> *Id.*, at pp. 76-83

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**Liza H. Africa**

The prosecution next presented Liza H. Africa (Africa) who likewise testified through her Judicial Affidavit dated June 8, 2022.<sup>152</sup>

Witness Africa mentioned that she is currently the Division Head of the Management Information System, Records and Archiving Division (MIS-RAD) of the business permits and Licensing Department (BLPD) of the local government of Quezon City (QC-LGU).<sup>153</sup>

In relation to this case, she recalled that she received a subpoena from the OSP requesting for the submission of certified true copies of the business permit/s that were issued to Mangopina. According to her, their system reflected a record of issuance of Business Permit No. 97-075991 to Mangopina for the year 2001. However, their records also show that Mangopina was not given a renewal of its business permit after December 31, 2001.<sup>154</sup> Witness Africa also mentioned the other documents which are related to the above-mentioned business permit issued to Mangopina, namely: [1] the original application for the renewal of its business permit; [2] a photocopy of the Mangopina's Barangay Clearance dated January 29, 2001; [3] photocopy of the official receipt that was issued to Mangopina as a supporting document for its application for a business permit and, [4] the duplicate original copy of Mangopina's Mayor's Permit No. 94-15911 which was the permit issued to Mangopina when it first registered with their office as a new business on August 16, 1994.<sup>155</sup>

She further explained that the original copy of the barangay clearance should be with the applicant because only a photocopy of the said document is submitted to their office for comparison purposes. She recalled that her staff prepared a transmittal letter

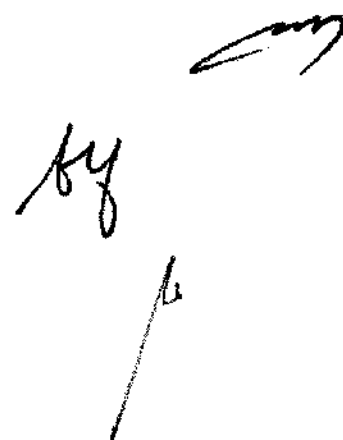
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<sup>152</sup> pp. 241-254, Vol. IV, Record

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*, at pp. 243-246

<sup>155</sup> *Id.*, at p. 246



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and photocopied the said documents and submitted it to the Office of the Ombudsman.<sup>156</sup>

Moreover, she clarified the variance in the control numbers of Mangopina's mayor's permit and business permit. According to the said witness, all businesses that were registered with their office before 1997 were assigned new business permit numbers. She declared that the phrase "*Permit Fee & City Tax to be Paid on or Before January 20, 2002*" appearing on the 7<sup>th</sup> row of Mangopina's Business Permit No. 94-15911 serves as a reminder to Mangopina that a permit fee and city tax must be paid on or before the indicated date, and that a business permit was issued to it for the year 2001.<sup>157</sup>

On cross-examination, witness Africa testified that she does not know if a registered business in Quezon City will be able to sell its goods to clients outside Quezon City.<sup>158</sup>

On questions from the Court, the same witness further clarified that a business permit was issued to Mangopina in 2001; that a mayor's permit was issued to the same establishment in 1994; that a mayor's permit is the same as a business permit; and, that the 2001 business permit of Mangopina is a renewal of its 1994 mayor's permit.<sup>159</sup>

She further narrated that while the standard procedure prescribes that a business permit is issued to an applicant after its payment of the necessary fees, the usual practice in their office was to allow business permit holders to simply pay for the renewal of their business permits without actually claiming the approved permit.<sup>160</sup> Thus, she admitted that there is a possibility that Mangopina had valid business permits for the years 1995 to 2000 although the actual permits were not issued to it.<sup>161</sup>

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<sup>156</sup> *Id.*, at pp. 249-250

<sup>157</sup> *Id.*

<sup>158</sup> pp. 17-18, TSN, June 14, 2022

<sup>159</sup> *Id.*, at p. 18

<sup>160</sup> *Id.*, at p. 22

<sup>161</sup> *Id.*, at pp. 18-23

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Moreover, she stated that there are also several documentary requirements that must be submitted by the applicant of a business permit, *i.e.*, *SEC registration, Articles of Incorporation*, among other things. According to her, the new applications will be reviewed, together with their supporting documents, by their office.<sup>162</sup> However, for applicants who are renewing their business permits, they are required to pay the business permit fee and other licensing fees and they are given a period of ninety (90) days after payment within which to submit to their office the said documentary requirements.<sup>163</sup> Witness Africa further noted that should the applicant fail to submit the said documents within the prescribed period, a team of inspectors will be sent by the local government to the place of business of the concerned establishment and it will be given an additional seven (7) days to comply. If it remained non-compliant, the said business will be given a "*Show Cause Order*" to explain why it should not be shut down. Thereafter, a "*Closure Order*" will be issued to the establishment should it continue to fail to comply with the regulations of their city.<sup>164</sup>

In relation to the business permit of Mangopina, witness Africa clarified that it was able to pay its business permit renewal fees for the years 1995 to 2000. She pointed out that Mangopina was issued business permits for the years 1994, 1998, 1999 and 2001. Their records also show that Mangopina paid for the renewal of the said permits for the years 1995, 1996, 1997, and 2000. Again, she emphasized that it was the standard practice in their local government that in the renewal of a business permit, businesses were allowed to simply pay for the renewal fee and submit its supporting documents after payment. She testified that these businesses are deemed lawful possessors of a business permit from Quezon City even though they are not in physical possession of a business permit.<sup>165</sup>

<sup>162</sup> *Id.*, at p. 35

<sup>163</sup> *Id.*, at p. 30

<sup>164</sup> *Id.*, at p. 32

<sup>165</sup> *Id.*, at p. 37



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Lastly, she noted that their office did not issue any “*Closure Order*” against Mangopina Trading from 1994 to 2000.<sup>166</sup>

**RJ A. Bernal**

The prosecution next presented RJ A. Bernal (Bernal) who also testified through his Judicial Affidavit dated June 10, 2022.<sup>167</sup>

Witness Bernal stated that he is the Chief Counsel of the Company Registration and Monitoring Department (CRMD) of the Securities and Exchange Commission (SEC); that in connection with his official functions, he received a subpoena from the Office of the Special Prosecutor sometime in May 2022 requiring him to submit certified true copies of the Articles of Incorporation, By-Laws, General Information Sheets, and all other documents submitted by Mangopina to the SEC.<sup>168</sup>

He recalled that he instructed his staff to print “*digital reproductions*” of the said documents, and copies thereof were verified by him and his staff and thereafter were certified as the true and correct digital reproductions of the official files. After completion, he recounted that he submitted the said documents to the Office of the Special Prosecutor.<sup>169</sup>

The defense opted not to cross examine the said witness. Thus, the testimony of witness Bernal was deemed completed.<sup>170</sup>

**Carolyn G. Bastasa**



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<sup>166</sup> *Id.*, at p. 38

<sup>167</sup> pp. 491-497, Vol. IV, Record

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*, at pp. 493-495

<sup>170</sup> p. 11-12, TSN, June 16, 2022



The prosecution next presented Carolyn G. Bastasa who also testified through her Judicial Affidavit dated June 23, 2022.<sup>171</sup>

Witness Bastasa testified that she is currently the Local Treasury Operations Officer III at the Records, Verification and Delinquency Section (RVDS) of the Taxes and Fees Division of the Treasury Department of the local government of Quezon City (QC-LGU); that in connection with her official functions, she received a subpoena from the Office of the Special Prosecutor requiring her to submit a certification on whether Mangopina Trading paid its business permit fee and other taxes/fees for the years 2000 to 2004.<sup>172</sup>

According to the said witness, she found that based on the QC-LGU's *Business Payment Query System*, Mangopina paid its Mayor's Permit/Business Permit and other license fees for the years 2000 to 2002 only, and no payments were made for the years 2003 and 2004.<sup>173</sup> She recalled that after coming up with the said finding, she prepared the required certification and submitted it to the Office of the Special Prosecutor.<sup>174</sup>

The defense did not conduct any cross-examination. Thereafter, the testimony of witness Bastasa was deemed completed.<sup>175</sup>

### **Rowena Cervantes Reyes**

The prosecution presented Rowena Cervantes Reyes (Reyes) as its last witness who likewise testified through her Judicial Affidavit dated June 24, 2022,<sup>176</sup> and her Amended Judicial Affidavit dated July 7, 2022.<sup>177</sup>

<sup>171</sup> pp. 580-592, Vol. IV, Record

<sup>172</sup> *Id.*, at p. 585

<sup>173</sup> *Id.*, at p. 585

<sup>174</sup> *Id.*, at p. 589

<sup>175</sup> p. 15, TSN, June 28, 2022

<sup>176</sup> pp. 555-562, Vol. IV, Record

<sup>177</sup> pp. 662-668, Vol. IV, Record

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The said witness testified that she is currently the supervising agriculturist and the acting assistant chief of the Fertilizer Regulations Division (FRD) of the Department of Agriculture-Fertilizer and Pesticide Authority (DA-FPA); that she was appointed as supervising agriculturist in 2017; that in connection with her official functions, she received a subpoena from the Office of the Special Prosecutor directing her to submit a *certification* on the following matters, namely: [1] whether “MRG Liquid Fertilizer” and “Del Gro Super Foliar Fertilizer” are name brand names; [2] the list of companies that manufactures the said fertilizers; and, [3] whether the said companies are duly licensed to manufacture the above-mentioned fertilizers in 2003, 2004, and 2005.

She recalled that she was able to verify that Mangopina is a licensed manufacturer and distributor of fertilizers with License No. 104 which expired on January 14, 2004, and License No. 201 which expired on July 26, 2005; the name “MRG Liquid Fertilizer” is a brand name registered under Mangopina with Registration No. 1-31-F-007 dated April 1, 2003, and expired on January 26, 2006;<sup>178</sup> and, that “Del Gro Super Foliar Fertilizer” is a product brand name registered under JR & JP Enterprises with Registration No. 1-1LP-2110 dated November 8, 2005, which expired on November 8, 2006. According to her, JR & JP Enterprises is a licensed area distributor of fertilizers with License No. 56, and a manufacturer and distributor of fertilizers with License Nos. 219 and 239 which expired on August 29, 2005, and August 26, 2006, respectively.<sup>179</sup>

Lastly, she declared that she prepared two (2) certifications in relation to her findings and submitted them to the Office of the Special Prosecutor.<sup>180</sup>

On cross-examination, witness Reyes reiterated that she has been employed with the FPA since 2015, and, that she was appointed as supervising agriculturist and was designated as the

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<sup>178</sup> *Id.*, at pp. 557-558

<sup>179</sup> *Id.*, at p. 665

<sup>180</sup> *Id.*, at p. 558



acting assistant chief of the Fertilizer Regulations Division (FRD) in 2017.<sup>181</sup> She explained that the FRD regulates the manufacture, sale, trading, registration, licensing, and distribution of fertilizers. She pointed out that for businesses to validly engage in the manufacturing, distribution and/or selling fertilizers, it must have a license to manufacture issued by the FRD.<sup>182</sup>

Witness Reyes further clarified that a licensed distributor may sell its own fertilizers;<sup>183</sup> that Mangopina is a licensed manufacturer and distributor of fertilizers; and, that Mangopina registered its product with the FRD in 2003.<sup>184</sup>

Moreover, the said witness testified that she was not employed with the FRD when Mangopina applied for its license to manufacture and distribute fertilizers; that she does not have any personal knowledge regarding Mangopina's application; and, that she only verified the existence of the licenses of Mangopina through the available records.<sup>185</sup>

Witness Reyes also explained that the FRD has regulatory functions which include, namely: the registration of fertilizer products, the issuance of licenses prior to distribution of fertilizers into the market, and, the issuance of experimental use permit prior to the product registration.<sup>186</sup>

On questions from the Court, she further testified that Mangopina's manufacturer's license expired on January 14, 2004, while its distributor's license expired on July 26, 2005.<sup>187</sup> According to her, Mangopina can no longer sell its products to the market after the expiration of its manufacturer's license, otherwise, it would be violating Presidential Decree (P.D.) No. 1144.<sup>188</sup>

<sup>181</sup> pp. 16-17, TSN, September 20, 2022

<sup>182</sup> *Id.*, at p. 17

<sup>183</sup> *Id.*, at p. 18

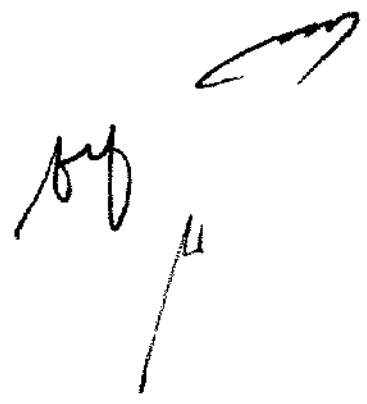
<sup>184</sup> *Id.*, at pp. 18-19

<sup>185</sup> *Id.*, at p. 20

<sup>186</sup> *Id.*, at p. 21

<sup>187</sup> *Id.*, at p. 24

<sup>188</sup> *Id.*, at p. 24

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The same witness added that Mangopina had a valid *Certificate of Product Registration* (CPR) at the time it entered into the subject transaction with the Municipality of Lazi on April 20, 2004; and, that a CPR is issued to businesses which have “a valid license and a registered product” with the FPA.<sup>189</sup> However, she clarified that a company should have valid licenses and its product/s must be registered with the FPA before it may engage in the business of manufacturing/sale/distribution of fertilizers.<sup>190</sup>

Lastly, witness Reyes reiterated that “MRG Liquid Fertilizer” and “Delgro Fertilizer” are brand names which were distributed by Mangopina and JR & JP Enterprises, respectively.<sup>191</sup>

Thereafter, the prosecution formally offered the following documentary evidence, to wit:

Exhibit	Description
A	Complaint dated 29 June 2016 filed by AGIO III Gerhard G. Basco, consisting of nineteen (19) pages.
A-1	Certification dated 6 November 2015 issued by Joannes Paulus V. Jumadla, MPDC/HRMO Designee, Municipality of Lazi, Siquijor.
A-2	Personal Data Sheet of accused Orville A. Fua.
A-3	Service Record dated 22 July 2015 of Orville A. Fua.
A-4	Oath of Office dated 30 June 1995 of Orville A. Fua as Vice Mayor of the Municipality of Lazi, Siquijor.
A-5	Service Record dated 22 July 2015 of Orville A. Fua.
A-6	Oath of Office dated 8 January 2004 of Orville A. Fua.
A-7	Certificate date 6 November 2015 by Joannes Paulus V. Jumadla, MPDC/HRMO Designee, Municipality of Lazi, Siquijor.
A-8	Personal Data Sheet of Ana Maria Leilani S. Monte.
A-9	Service Record of Ana Marie Leilani S. Monte.
A-10	Position Description Form of Ana Maria Leilani S. Monte.

<sup>189</sup> *Id.*, at pp. 27-28

<sup>190</sup> *Id.*, at p. 26

<sup>191</sup> *Id.*, at p. 29

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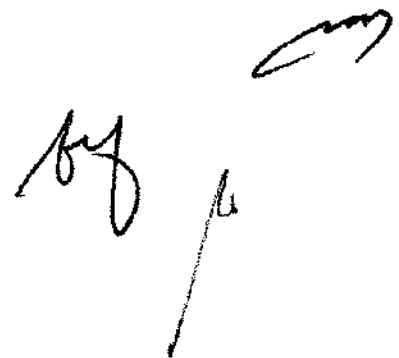
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A-11 to A-12	Appointment dated 15 May 2002 of Ana Marie Leilani S. Monte as Municipal Accountant.
A-13	Oath of Office dated 16 April 2002 of Ana Marie Leilani S. Monte as Municipal Accountant.
A-14	Certification dated 6 November 2015 issued by Joannes Paulus V. Jumadla, MPDC/HRMO Designee, Municipality of Lazi, Siquijor.
A-15	Certification dated 28 July 2015 issued by Lee Hines L. Largo MCR/HRMO Designate Municipality of Lazi, Siquijor.
A-16	Oath of Office dated 30 January 2001 of Rose Marie V. Tomogsoc as Municipal Treasurer of Lazi, Siquijor.
A-17	Appointment dated February 9, 2001 of Rose Marie V. Tomogsoc as Municipal Treasurer of Lazi, Siquijor.
A-18	Service Record of Rose Marie V. Tomogsoc.
A-19	Certificate of Non-Availability dated 6 November 2015 issued to Ivan Y. Marchan by Joannes Paulus V. Jumadla, MPDC/HRMO Designee, Municipality of Lazi, Siquijor.
A-20	Certification dated 6 November 2015 issued by Lee Hines L. Largo MCR/HRMO Designate Municipality of Lazi, Siquijor.
A-21	Personal Data Sheet of Ivan Y. Marchan.
A-22	Service Record dated 22 July 2015 of Ivan Y. Marchan
A-23	Position Description Form of Ivan Y. Marchan as Municipal Budget Officer.
A-24	Appointment dated 31 October 1997 of Ivan Y. Marchan as Municipal Budget Officer of Lazi, Siquijor.
A-25	Oath of Office dated 1 November 1996 of Ivan Y. Marchan as Budget Office.
A-26	Certification dated 6 November 2015 issued by Joannes Paulus V. Jumadla, MPDC/HRMO Designee, Municipality of Lazi, Siquijor.
A-27	Personal Data Sheet of Natalio B. Jumawan, Jr.
A-28	Service Record dated 14 June 2003 of Natalio B. Jumawan Jr.
A-29	Position Description Form of Natalio B. Jumawan as Municipal Engineer of Lazi, Siquijor.
A-30 to A-31	Appointment dated 16 March 1994 of Natalio B. Jumawan, Jr. as Municipal Engineer of Lazi, Siquijor.



*Decision*

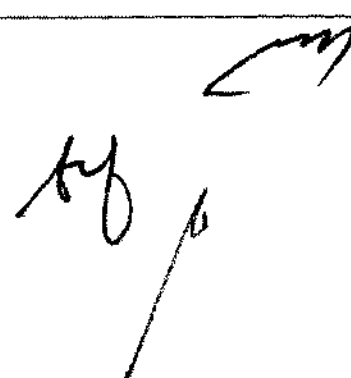
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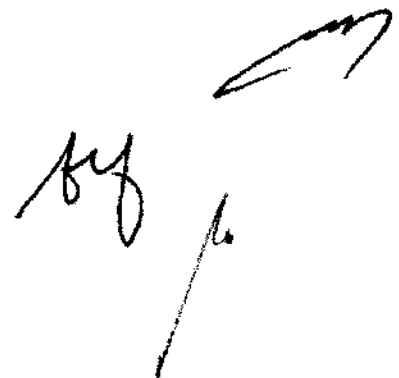
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A-32	Oath of Office dated 4 February 1994 of Natalio B. Jumawan, Jr., as Municipal Engineer of Lazi, Siquijor.
A-33	Birth Certificate of Natalio B. Jumawan, Jr.
A-34	Certification dated 6 November 2015 by Joannes Paulus V. Jumadla, MPDC/HRMO Designee, Municipality of Lazi, Siquijor.
A-35	Personal Data Sheet of Sue Agnes A. Castillon.
A-36	Service Record dated 17 March 2004 of Sue Agnes A. Castillon.
A-37 to A-37-a	Position Description Form of Sue Agnes A. Castillon as Private Secretary of Lazi, Siquijor.
A-38	Office Order dated 5 June 2006, terminating Sue Agnes A. Castillon as Private Secretary to the Mayor of Lazi, Siquijor.
A-39	Appointment dated 1 July 1998 of Sue Agnes A. Castillon as Private Secretary to the Mayor of Lazi, Siquijor.
A-40	Oath of Office dated 1 July 1998 of Sue Agnes A. Castillon as Private Secretary to the Mayor of Lazi, Siquijor.
A-41	Birth Certificate of Sue Agnes A. Castillon.
A-42	Certification dated 6 November 2015 issued by Joannes Paulus V. Jumadla, MPDC/HRMO Designee, Municipality of Lazi, Siquijor.
A-43 to A-43-a	Personal Data Sheet dated 12 December 1989 of Teodoro G. Jumadla, Jr.
A-44	Service Record 24 March 2012 of Teodoro G. Jumadla Jr.
A-45	Appointment dated 12 December 1989 of Teodoro G. Jumadla Jr. as Municipal Planning and Development Coordinator of Lazi, Siquijor.
A-46	Service Record dated 21 November 2007 of Teodoro G. Jumadla Jr.
A-46-a	Service Record dated 1 March 2002 of Teodoro G. Jumadla Jr.
A-47	Certificate dated 13 March 2007 re birth of Teodoro G. Jumadla, Jr.
A-48	Articles of Incorporation of Mangopina Trading Co. Inc., dated 12 September 1989, consisting of 10 pages.
A-48-a	Certified true copy of Articles of Incorporation of Mangopina Trading Co.
A-49	By Laws of Mangopina, Co. Inc. dated 12 September 1989, consisting of 5 pages.

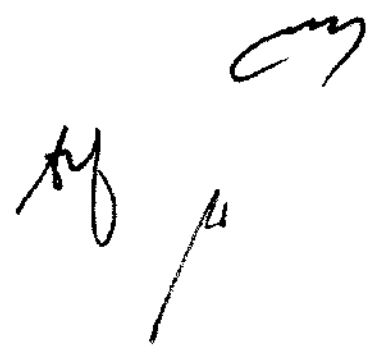
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A-49-a	Certified true copy of By-Laws of Mangopina Trading.
A-50	General Information Sheet of Mangopina Trading Co., Inc. dated 11 May 2005, consisting of 6 pages.
A-50-a	Certified true copy of General Information Sheet of Mangopina Trading Co., Inc. dated May 11, 2005.
A-51	General Information Sheet of Mangopina Trading Co. Inc. 31 May 2004, consisting of 6 pages.
A-51-a	Certified true copy of General Information Sheet of Mangopina Trading Co., Inc. dated May 31, 2004.
A-52	Articles of Partnership of Perzebros Company dated 1 April 2004, consisting of 5 pages.
A-53	Service Record dated 3 December 2015 of Edgardo B. Lecciones, Jr.
A-54	Personal Data Sheet dated 26 September 2000 of Eduardo B. Lecciones Jr.,
A-55 to A-55-a	Birth Certificate of Eduardo B. Lecciones Jr.
A-56	Memorandum of Agreement dated 6 April 2004 between [the] Department of Agriculture Regional Field Unit 7 and [the] Municipality of Lazi, Siquijor, consisting of 2 pages.
A-57	DV No. 101-2004-5-1342 dated 5 May 2004 in the amount of P5,200,000.00
A-57-a	LBP Check No. 019659 dated 6 May 2004 in the amount of P1,000,000.00.
A-57-b	LBP Check No. 019660 dated 6 May 2004 in the amount of P1,000,000.00
A-57-c	LBP Check No. 019661 dated 6 May 2004 in the amount of P1,000,000.00.
A-57-d	LBP Check No. 019662 dated 6 May 2004 in the amount of P1,000,000.00.
A-57-e	LBP Check No. 019663 dated 6 May 2004 in the amount of P1,000,000.00.
A-57-f	LBP Check No. 019664 dated 6 May 2004 in the amount of P200,000.00.
A-57-g	Official Receipt No. 1598257 dated 6 May 2004 in the amount of P5,200,000.00.
A-58	DV No. 101-2004-12-4633 dated 17 December 2004.
A-58-a	LBP Check No. 023034 dated 17 December 2004 in the amount of P1,000,000.00.

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A-58-b	LBP Check No. 023036 dated 17 December 2004 in the amount of P200,000.00.
A-58-c	Official Receipt No. 1598194 dated 6 May 2004 in the amount of P2,800,000.00
A-58-d	Purchase Request No. 03-06404 dated 12 March 2004.
A-58-e	Notice to Bidders.
A-58-f	Notice to Bidders submitted by Gellys General Merchandise.
A-58-g	Notice to Bidders submitted by Estareja Store.
A58-h	Abstract of Quotations for Furnished Supplies and Material for the Office of the Municipal Treasurer, P.R. No. 03-06404 dated 12 March 2004 to be opened on 20 April 2004 at the Office of the Municipal Mayor, Lazi, Siquijor, recommending award to Mangopina Trading Co., Inc./Merlyn Lu, being the lowest bidder.
A-58-i	Purchase Order No. 04-00067(A) dated 20 April 2004 in the amount of P5,198,700.00.
A-58-j	Inspection & Acceptance Report dated 26 April 2004 of PO No. 04-00067 (A) .
A-59	Disbursement Voucher No. 300-0405-6-42 (not clear) in the amount of P4,990,752.00.
A-59-a	Check No. 0000065800 dated 7 May 2004 in the amount of P4,990,752.00 issued to Mangopina Trading Company, Inc.
A-59-b	Official Receipt No. 0612 dated 7 May 2004 of Mangopina Trading Company, Inc., in the amount of P4,990,752.00.
A-60-c to A-61	Schedule of Excess Cost OF Foliar Fertilizers Purchase by [the] Department of Agriculture-RFUs, GMA Funds-P728M, for CY 2004.
B	Transmittal Letter dated August 7, 2019 addressed to ASP Joan Paulette D. Nunez from Director Thea Marie Corinne F. Palarca.
B-1	Subpoena Duces Tecum dated July 18, 2019.
B-2	Special Allotment Release Order No. E-04-00164 dated February 3, 2004.
B-3	Letter (Advice of SARO issued) dated February 3, 2004 addressed to the Honorable Secretary, Department of Agriculture from Secretary Emilia T. Boncodin.
B-4	Annex A of SARO No. e-04-00164 dated February 3, 2004.

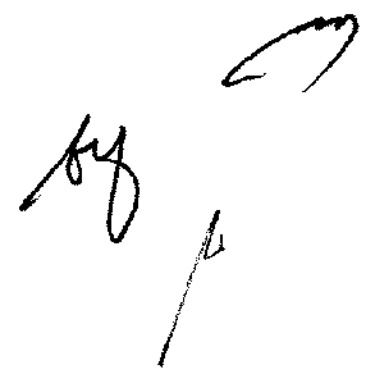


Decision

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B-5	Letter dated February 2, 2004, addressed to Secretary Emilia T. Boncodin from Undersecretary for Admin & Finance Jocelyn I. Bolante.
B-6	Notice of Cash Allocation No. 222447-1 dated February 3, 2004.
B-7	Advice of NCA Issued dated February 3, 2004.
B-8	Notice of Cash Allocation No. 222771-3 dated April 5, 2004.
B-9	Advice of NCA Issued dated April 5, 2004.
B-10	Notice of Cash Allocation No. 222922-0.
B-11	Advice of NCA Issued Dated April 28, 2004.
B-12	Letter dated April 21, 2004 addressed to Secretary Emilia T. Boncodin from Undersecretary Jocelyn I. Bolante.
B-13	Notice of Cash Allocation No. 222942-6 dated May 4, 2004.
B-14	Advice of NCA Issued dated May 4, 2004.
B-15	Letter dated April 28, 2004, addressed to Secretary Emilia T. Boncodin from Undersecretary for Admin & Finance Jocelyn I. Bolante.
B-16	Notice of Cash Allocation No. 243838-0 dated November 30, 2004.
B-17	Advice of NCA Issued dated November 30, 2004.
B-18	Letter dated November 2, 2004 addressed to Secretary Emilia T. Boncodin from Secretary Arthur C. Yap.
B-19	Certification dated August 7, 2019.
D	Letter dated July 30, 2019 addressed to ASP Joan Paulette D. Nunez from SA III Cyril T. Pal-ing.
D-1	Subpoena dated July 18, 2019.
D-2 to D-4	List of Documents.
D-5	Certificate of Disbursement issued by Municipal Treasurer Rose Marie V. Tomogsoc.
D-6	Audit Observation Memorandum No. 2004-002(300) dated October 8, 2004.
D-7	Audit Observation Memorandum No. 2006-05 dated May 19, 2006.
D-8	Check No. 65800 in the amount of P4,990,752.00 dated May 2004.
D-9	Official Receipt No. 0612 dated May 7, 2004 in the amount of P4,990,752.00
D-10	Disbursement Voucher No. 300-0405-004 dated May 7, 2004.

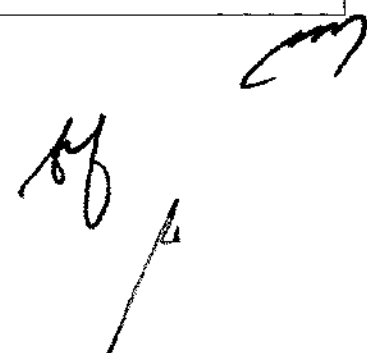


**Decision**

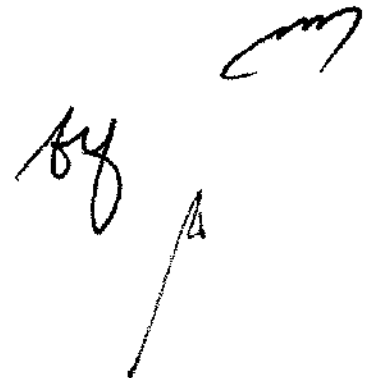
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D-11	Journal Entry Voucher No. 300-04-05-68 dated May 7, 2004.
D-12	Delivery Receipt No. 2220 dated April 26, 2004.
D-13	Purchase Request No. 03-06404 dated March 12, 2004.
D-14	Purchase Order No. 04-00067(A) dated April 20, 2004.
D-15	Inspection and Acceptance Report dated April 26, 2004.
D-16	Abstract for Quotation.
D-17	Notice to Bidders containing price quotations re: MRG Liquid Fertilizer and Del Gro Super Foliar Fertilizer by: Merlyn E. Lu.
D-18	Notice to Bidders containing price quotations re: MRG Liquid Fertilizer and Del Gro Super Foliar Fertilizer by: Gelly's General Merchandise.
D-19	Notice to Bidders containing price quotations re: MRG Liquid Fertilizer and Del Gro Super Foliar Fertilizer by: Estajera Store.
D-20	Letter dated April 2, 2004 addressed to accused Mayor Orville A. Fua from Yolanda P. Milne, VP-Finance of Mangopina Trading Company.
D-21	Letter dated April 6, 2004 addressed to accused Orville A. Fua from Yolanda P. Milne, VP-Finance of Mangopina Trading Company.
D-22	Letter dated March 6, 2004 addressed to accused Orville A. Fua from Yolanda P. Milne, VP-Finance of Mangopina Trading Company.
D-23 to D-24	Individual Project Program of Works dated April 26, 2004.
D-25	Materials And Labor Sheets.
D-26	Program/Project Outline, consisting of 3 pages.
D-27	Memorandum of Agreement dated April 6, 2004, consisting of 2 pages.
D-34	Minutes of the Meeting of the BAC of Lazi, Siquijor for the Procurement of MRG AND DELGRO Fertilizers on April 20, 2004, 10'clock AM at SB Session Hall.
D-35	Certification dated November 5, 2001.
D-36	Authorization dated October 30, 2001.
D-37	Quezon City Business Permit No. 97-075991 dated February 10, 2001.
D-42	Official Receipt No. 7828190 dated August 22, 2001.
D-43	Fertilizer and Pesticide Authority License No. 228 dated August 21, 2001.



D-44	Certificate of BIR Registration No. 94-055-001378.
D-45	Fertilizer and Pesticide Authority License No. 198 dated August 21, 2003.
D-46	Fertilizer and Pesticide Authority Certificate of Product Registration dated July 27, 1999.
D-47	Certificate of Registration of Business Name dated March 21, 2000.
D-48	Official Receipt No. A-2911858.
D-49	Quezon City Treasurer Tax Assessment/Receipt No. 191610 dated January 16, 2002.
D-49-a	Original Certification June 20, 2022 of one Edgar T. Villanueva, City Treasurer.
D-49-b	Certified true copy of Business Payment for the tax year 2002 of Mangopina Trading Co., Inc.
D-49-c	Certified true copy of Business Payment for the tax year 2001 of Mangopina Trading Co., Inc.
D-49-d	Certified true copy of Business Payment for the tax year 2000 of Mangopina Trading Co., Inc.
D-50	SEC Certificate of Registration No. 168209.
D-51	San Pablo City Mayor's Permit No. 4252.
D-52	Issuance Receipt dated October 18, 2004.
D-53 to D-65	Summary Report on the Utilization of MRG Liquid Fertilizer as of May 18, 2006 certified correct by Certerio Y. Marchan, Municipal Agricultural Officer.
D-83	Letter dated May 18, 2006 addressed to DTI Provincial Director Nimfa M. Virtucio from State Auditor Eufemia C. Jaugan.
D-84	Letter dated May 19, 2006 addressed to State Auditor Eufemia C. Jaugan from DTI Provincial Director Nimfa M. Virtucio.
D-85	Letter dated May 22, 2006 addressed to Mr. Dionisio Capitan from State Auditor Eufemia C. Jaugan.
D-86	Letter dated May 22, 2006 addressed to Eufemia C. Jaugan from Mr. Dionisio Capitan, Fertilizer and Pesticide Authority Coordinator, Department of Agriculture, Larena, Siquijor.
D-87	Undated Letter to State Auditor Eufemia C. Jaugan from Soledad Duhaylungsod, Manager of Gelly's General Merchandise.



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D-88	Letter dated May 19, 2006 addressed to the Manager of Gelly's General Merchandise from State Auditor Eufemia C. Jaugan.
D-89	Letter dated May 19, 2006 addressed to the Manager of Estajera Store from State Auditor Eufemia C. Jaugan.
D-93	BIR Certificate of Registration No. 96-380-000004 dated January 4, 1996 of Mangopina Trading Company Inc.
D-94	Fertilizer and Pesticide Authority License No. 201 to operate as Manufacturer-Distributor with expiration dated July 26, 2005.
D-95	Fertilizer and Pesticide Authority Certificate of Product Registration for MRG Liquid Fertilizer with Registration No. 1-31F-007 issued on April 1, 2003 with expiration date January 26, 2006.
D-96	Mangopina Trading Company's Letter of Authority dated March 12, 2004 to Mrs. Merlyn E. Lu to be its true and lawful representative.
D-97	Mangopina Trading Company's Secretary Certificate dated February 11, 2004 giving authority to Mrs. Yolanda P. Milne, VP-Finance, to sign documents, collect and encash check payments.
D-98 to D-101	Summary Report on the Utilization of Del-Gro Organiz Fertilizer as of May 18, 2006 certified correct by Certerio Y. Marchan, Municipal Agricultural Officer.
D-148 to D-149	Affidavit of Soledad Duhaylungsod subscribed and sworn to on November 20, 2006 denying her signature on the Notice to Bidders.
E	3 <sup>rd</sup> Indorsement dated January 19, 2007 signed by Grace R. Napigkit, State Auditor V, Regional Cluster Director, COA Cluster IV-Visayas.
E-1	2 <sup>nd</sup> Indorsement dated January 11, 2007 signed by Atty. Nilo C. Pala, Officer-in-Charge, Office of the Regional Cluster Director, Legal and Adjudication Sector-Region VII.
E-2	1 <sup>st</sup> Indorsement dated December 12, 2006, signed by Grace R. Napigkit, State Auditor V, Regional Cluster Director, COA Cluster IV-Visayas.
E-3	Letter to the Regional Cluster Director, COA RO VII signed by Eufemia C. Jaugan, State Auditor II, Audit Team Leader, Province of Siquijor.

**Decision**

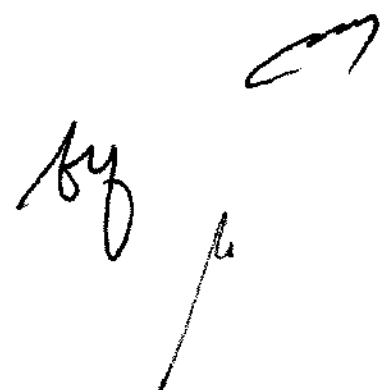
People v. Fua, et al.

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E-4 to E-10	Audit Report dated May 29, 2006 signed by Eufemia C. Jaugan, State Auditor III, Audit Team Leader, Province of Siquijor.
G	Certification of Licenses dated June 22, 2022, issued by the Fertilizer Regulations Division of the Fertilizer and Pesticide Authority.
G-2	Signature of Executive Director Wilfredo C. Roldan.
G-1	Certification of Product Registration also dated June 22, 2022 issued by the Fertilizer Regulations Division of the Fertilizer and Pesticide Authority.
G-1a	Signature of Executive Director Wilfredo C. Roldan.
I	Original Transmittal Letter dated May 26, 2002 addressed to Assistant Special Prosecutor II Joan Paulette D. Nunez from Ma. Liza H. Africa, Division Head of MIS, Records and Archiving Division.
I-1 to I-1-a	Certified true copy of a Business Permit which is unnumbered and undated with the notation ***renewal*** 94-15911-A on the upper right-hand side, consisting of 2 pages (front and dorsal portion) and bearing the stamp marking Certified True Copy on the bottom right portion of the front page.
I-2 to I-2-a	Certified true copy of an undated Application for Business Permit & License for Single Proprietorship of Mangopina Trading Co., Inc., with DTI Business Name Registration No. 690097 dated March 21, 2000, consisting of 2 pages (front and dorsal portion) and bearing the stamp marking Certified True Copy on the bottom left portion.
I-3	Certified copy of photocopy on file of Barangay Clearance for Business Permit of Mangopina Trading Co., Inc., issued by the Office of the Barangay Captain of Barangay Apolonio Samson, District II, Quezon City on January 29, 2001, consisting of one page and bearing stamp marking certified Copy of Photocopy on File on the bottom right portion.
I-4	Copy of an Official Receipt No. 8-B-2001-017-000970 dated January 29, 2001, consisting of one page and bearing the stamp marking Certified Copy of Photocopy on File on the bottom right portion.
I-5 to I-5-a	Certified true copy of a Mayor's Permit No. 94-15911 issued to Mangopina Trading Co., Inc. on August 16, 1994, consisting of 2 pages (front and dorsal portions) and



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bearing the stamp marking Certified True Copy on the bottom right portion.

In its *Resolution* promulgated on November 11, 2022, the Court admitted all the above-enumerated exhibits considering that the objections thereto of the defense referred more to their probative value than their admissibility.<sup>192</sup>

As earlier mentioned, accused Jumadla filed his “*Demurrer to Evidence*” on March 12, 2023.<sup>193</sup> The prosecution filed its *opposition* thereto on March 13, 2023.<sup>194</sup> In its *Resolution* promulgated on April 24, 2023, the Court re-submitted the present case for decision and submitted the said *demurrer to evidence* for resolution.<sup>195</sup>

### **THE DEFENSE’S EVIDENCE**

As adverted to earlier, the Court denied the *motions for leave to file demurrer to evidence* filed by accused Tomogsoc, Marchan, Jumawan, Castillon, Fua, Monte, and Jumadla in its *Resolutions* promulgated on December 6, 2022,<sup>196</sup> and January 23, 2023.<sup>197</sup>

On February 13, 2023, accused **Jumadla** filed a “*Manifestation to File Demurrer to Evidence*” dated February 13, 2023, stating therein that he is filing a *demurrer to evidence* without leave of court.<sup>198</sup> In its *Resolution* promulgated on February 14, 2023, the Court [1] gave accused Jumadla a non-extendible period of ten (10) days within which to file his *demurrer to evidence* (the prosecution was also given a similar period within which to file its

<sup>192</sup> pp. 451-452, Vol. V, Record

<sup>193</sup> pp. 16-26, Vol. VI, Record

<sup>194</sup> *Id.* at pp. 30-48

<sup>195</sup> *Id.* at pp. 117-119

<sup>196</sup> pp. 515-516, Vol. V, Record

<sup>197</sup> *Id.* at pp. 594-595

<sup>198</sup> *Id.* at pp. 614-616

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comment/opposition), [2] partially granted the prayer of the prosecution to cancel the hearings set on February 22 and 23, 2023, only with respect to accused Jumadla considering that he has been precluded from presenting evidence on his behalf; and, [3] held in abeyance the resolution of the said *demurrer to evidence* which shall be resolved simultaneously with the main decision after the presentation of evidence for the other accused.<sup>199</sup>

On February 22, 2023, Atty. Jacinto, counsel for accused **Tomogsoc, Jumawan, Castillon** and Marchan, manifested that in view of the untimely demise of accused Marchan, he will no longer present witnesses for the said accused as accused Marchan was supposed to be his only witness.<sup>200</sup> Atty. Salting, counsel for accused **Fua**, joined the said *manifestation* on even date.<sup>201</sup>

On March 27, 2023, Atty. Robles, counsel for accused **Monte**, manifested in open court that the said accused was waiving her right to present evidence in this case. The Court noted this *manifestation* in its Order dated March 27, 2023.<sup>202</sup>

On March 13, 2023, Atty. Albis, Jr., counsel for accused **Lu**, moved for the cancellation of the hearing on the ground that he found it difficult to finalize the Judicial Affidavit of accused Lu due to the distance between Manila and Siquijor where the said accused is currently residing. The Court granted the said *motion* and reset the hearing on March 27, 2023, and April 13, 2023.<sup>203</sup>

At the scheduled hearing on March 27, 2023, Atty. Albis, Jr., informed the Court that he was not ready to present evidence. Thus, he moved for the cancellation of the said scheduled hearing. The prosecution did not interpose any objection thereto provided that the next setting shall be intransferable in character.

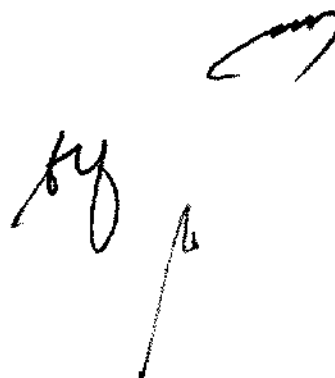
<sup>199</sup> p. 618, Vol. V, Record

<sup>200</sup> p. 10-11, Vol. VI, Record

<sup>201</sup> p. 10-11, Vol. VI, Record

<sup>202</sup> *Id.*, at p. 49

<sup>203</sup> *Id.*, at p. 27

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Accordingly, the Court set the presentation of evidence for accused Lu on April 13, 2023.<sup>204</sup>

On April 13, 2023, accused Lu and her counsel, Atty. Albis, failed to appear despite notice. Thus, the prosecution moved that the presentation of evidence by accused Lu be considered waived. After a review of the records, the Court found the said *motion* meritorious. Accordingly, it declared accused Lu to have waived her right to present evidence for her failure to so present evidence despite the warnings given to her and her counsel by this Court in the two (2) previous trial dates.<sup>205</sup>

In its *Order* dated April 13, 2023, the Court submitted the present case for decision considering that all the accused did not present any documentary evidence.<sup>206</sup>

#### **ACCUSED JUMADLA'S DEMURRER TO EVIDENCE**

In his "*Demurrer to Evidence*" dated March 3, 2023,<sup>207</sup> accused Jumadla prays that he be acquitted the crime charged against him because the prosecution evidence allegedly failed to prove beyond reasonable doubt the existence of all the elements of a Violation of Section 3 (e) of R.A. No. 3019 in this case.<sup>208</sup>

In support of his *motion*, accused Jumadla points out that it has been stipulated in this case that he was not part of the Bids and Awards Committee (BAC) of the Municipality of Lazi, Siquijor. Thus, he did not participate or was not involved in the procurement subject of this case.<sup>209</sup>

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<sup>204</sup> *Id.*, at pp. 49-50

<sup>205</sup> *Id.*, at p. 104

<sup>206</sup> p. 104, Vol. VI, Record

<sup>207</sup> *Id.*, at pp. 16-23

<sup>208</sup> *Id.*, at p. 21

<sup>209</sup> *Id.*, at p. 17

He further avers that he did not take part in the contract entered into by the municipality with Mangopina; he signed the Inspection and Acceptance Report (IAR) dated April 26, 2004, after the procurement process, and after the contract with Mangopina was executed; and, his only participation in this case was his inspection of the subject fertilizer products after they were delivered to the municipality.<sup>210</sup>

Lastly, accused Jumadla submits that the prosecution evidence failed to sufficiently show that he conspired with his co-accused in this case. Relying on the case *Bahilidad v. People*,<sup>211</sup> he contends that for conspiracy to exist, [1] the elements of conspiracy must be proven beyond reasonable doubt; [2] the evidence must be strong enough to show the community of criminal design among the accused; and, [3] it is essential that there must be a conscious design to commit the offense. He alleges that none of the above-mentioned requisites was established by the prosecution in this case.<sup>212</sup>

### **THE PROSECUTION'S OPPOSITION**

In its "*Opposition (To Accused Teodoro Jumadla, Jr's Demurrer to Evidence)*" dated March 13, 2023,<sup>213</sup> the prosecution points out that in the audit report submitted by State Auditor Eufemia Jaugan to the Field Investigation Office (FIO) of the Office of the Ombudsman, it was found that there was no sales invoice for the purchase of the subject fertilizers. Despite the said irregularity, accused Jumadla signed the said IAR which paved the way for the release of the subject funds to Mangopina and/or accused Milne and Yu.<sup>214</sup>

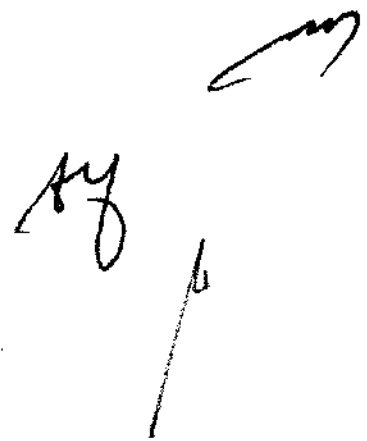
<sup>210</sup> *Id.*, at p. 17

<sup>211</sup> 615 SCRA 597 (2010)

<sup>212</sup> *Id.*, at p. 19

<sup>213</sup> *Id.*, at pp. 30-47

<sup>214</sup> *Id.*, at p. 31

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It further argues that conspiracy need not be proven by direct evidence and it may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they acted with a common purpose and design.<sup>215</sup> According to the prosecution, accused-movant Jumadla's act of signing the subject IAR dated April 26, 2004, is still part of the procurement process because without the said report, the subject transactions would not have been consummated. It asserts that the said overt act of the accused-movant satisfies the second and third elements of a Violation of Section 3 (e) of R.A. No. 3019.<sup>216</sup>

Lastly, the prosecution submits that a scrutiny of all the actions of the accused in these cases indicates their common criminal design to perpetrate the crime charged against them.<sup>217</sup>

### **THE RULING OF THE COURT**

Preliminarily, the Court notes that accused Milne remains at-large.<sup>218</sup> The records also show that in its *Resolution* promulgated on July 4, 2023, the Court dismissed the present case against accused Marchan due to the fact of his death.<sup>219</sup> Thus, the following disquisition pertains only to accused **Fua, Castillon, Jumawan, Tomogsoc, Monte, Jumadla, and Lu.**

#### **I. Case laws on violation of the procurement law vis-à-**

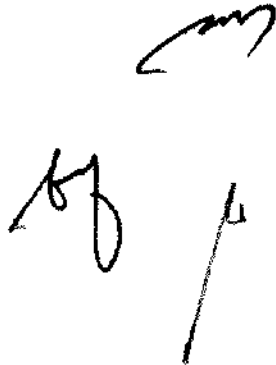
<sup>215</sup> *Id.*, at p. 31

<sup>216</sup> *Id.*, at pp. 45-46

<sup>217</sup> *Id.*, at p. 46

<sup>218</sup> p. 84, Vol. II, Record

<sup>219</sup> p. 155, Vol. VI, Record

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**vis a prosecution for  
Violation of Section 3 (e) of  
R.A. No. 3019.**

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The present case involves a charge for Violation of Section 3 (e) of R.A. No. 3019, as amended, *vis-à-vis* alleged Violations of R.A. No. 9184. Thus, there is an imperative need to discuss a priori the relevant rulings of the Supreme Court on the matter.

In the case of **Sabalдан, Jr., v. Office of the Ombudsman**,<sup>220</sup> the Supreme Court held that mere violation of the procurement laws does not *ipso facto* give rise to a Violation of Section 3 (e) of R.A. No. 3019. It must be proven beyond reasonable doubt that [1] the violation of procurement laws caused *undue injury* to any party or gave any private party *unwarranted benefits, advantage, or preference*; and [2] the accused acted with *evident bad faith, manifest partiality, or gross inexcusable negligence*.<sup>221</sup>

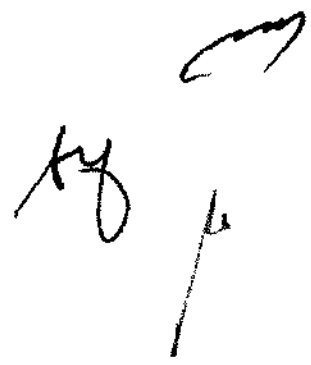
The Supreme Court reiterated the above ruling in the subsequent case of **Martel, et al., v. People**,<sup>222</sup> where it stressed that in cases involving prosecutions for Violation of Section 3 (e) of R.A. No. 3019, in relation to alleged irregularities in procurement committed by public officers, findings of violations of procurement laws, rules and regulations *per se* do not automatically lead to the conviction of the public officer under the said penal law. It must be still established beyond reasonable doubt that the essential elements of a Violation of Section 3 (e) of R.A. No. 3019 are present; it is through the lens of the Anti-Graft and Corruption Law, and not the procurement laws, that the guilt of the accused for a Violation of Section 3 (e) of R.A. No. 3019 must be determined.<sup>223</sup>

<sup>220</sup> 938 SCRA 17 (2020)

<sup>221</sup> See **Martel, et al., v. People**, G.R. No. 224720, February 2, 2021.

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

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Guided by the above-mentioned rulings of the Supreme Court, the Court shall now assess whether the evidence adduced by the prosecution sufficiently proved not only the alleged irregularities surrounding the procurement of the fertilizers in issue, but also the presence of all the elements of a Violation of Section 3 (e) of R.A. No. 3019.

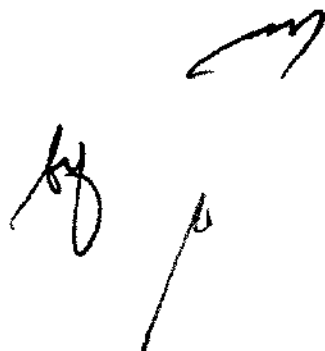
**II. The established participation of the accused in the subject transaction.**

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The records of this case show that on **March 12, 2004**, accused **Fua**, in his capacity as mayor of the Municipality of Lazi, Siquijor signed Purchase Request (PR) No. 03-06404 for the procurement of the following items, namely: "2,096 btls. MRG LIQUID FERTILIZER" and "1,258 bags DEL GRO SUPER FOLIAR FERTILIZER." The purpose indicated in the said PR reads: "Farm Inputs." Accused **Tomogsoc** also affixed her signature thereon certifying that funds were available.<sup>224</sup>

On **April 6, 2004**, the Department of Agriculture (DA) Regional Field Unit 7 (DA-RFU7), represented by a certain Eduardo B. Lecciones, and the Municipality of Lazi, Siquijor (Municipality), represented by accused **Fua**, entered into a *Memorandum of Agreement (MOA)* wherein the DA-RFU7 agreed to transfer in tranches to the said municipality the amount of Php8,000,000.00 for the implementation of the municipality's "Farm Inputs/Farm Implements Program."<sup>225</sup> The same agreement states that the DA-RFU7 received the amount of Php3,000,000.00 under Special Allotment Release Order (SARO) No. E-04-00156 dated February 3, 2004, and the amount of Php5,000,000.00 under SARO No. E-

<sup>224</sup> Exhibit A-58-d  
<sup>225</sup> Exhibit A-56

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04-00164 dated February 3, 2004.<sup>226</sup> Notably, the third *Whereas Clause* of the said MOA states that a certain Orlando A. Fua, Jr., representative of the lone district of Siquijor, and a certain Orlando B. Fua, Sr., governor of the Province of Siquijor, have assigned the above-mentioned amounts to the Municipality of Lazi, Siquijor.<sup>227</sup>

Thereafter, an **undated** *Notice to Bidders* was prepared by the municipality.<sup>228</sup> The following entities purportedly submitted their bids, namely: [1] Mangopina Trading, Inc. (Mangopina), represented by accused **Lu**, in the amount of Php1,550.00 per unit;<sup>229</sup> [2] Gelly's General Merchandise in the amount of Php1,870.00 per unit;<sup>230</sup> and, [3] Estajera Store in the amount of Php1,925.00 per unit.<sup>231</sup> The said *Notice to Bidders* was signed by accused **Fua** in his capacity as municipal mayor.

In the **undated** *Abstract of Quotation*, the Bids and Awards Committee (BAC) members, accused **Castillon, Tomogsoc, Jumawan**, and Marchan, together with a certain Michael Lumacad, recommended to accused **Fua** the award of the subject project to Mangopina, represented by accused **Lu**.<sup>232</sup> The said recommendation reads: "*Award the following bidder's recommended price being the lowest advantageous to the government; Hereby recommended for award to Mangopina Trading Com Inc./Merlyn Lu.*" The same was approved by accused **Fua**.<sup>233</sup>

On **April 20, 2004**, the Municipality of Lazi prepared Purchase Order (PO) No. 04-00067(A) addressed to Mangopina for the supply of "2,096 bottles of MRG Liquid Fertilizer" in the amount of Php1,550.00 per unit, and "1,258 bags of Del Gro Super Foliar Fertilizer" in the amount of Php1,550.00 per unit. The said PO was signed by accused **Lu** and accused **Fua** (Penalty clause in case of failure to make a full delivery within the time specified), accused

<sup>226</sup> Exhibit A-56

<sup>227</sup> Exhibit A-56

<sup>228</sup> Exhibits A-58-e to g

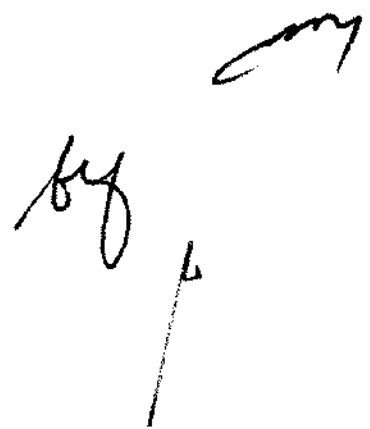
<sup>229</sup> Exhibit A-58-e

<sup>230</sup> Exhibit A-58-f

<sup>231</sup> Exhibit A-58-g

<sup>232</sup> Exhibit A-58-h

<sup>233</sup> Exhibit A-58-h

Handwritten signatures and initials in black ink. At the top right, there is a signature that appears to be 'Fua'. Below it, there are initials 'Lu' and a vertical line with a small hook at the bottom, possibly representing another signature or a mark.

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**Fua** (Requisitioning Office/Department) and accused **Monte** (Funds Available).<sup>234</sup>

On **April 26, 2004**, accused **Jumadla** prepared an *Inspection & Acceptance Report (IAR)* certifying that he “inspected, verified and found OK As to the quantity and specifications” the following item, namely: “2,096 btls. MRG LIQUID FERTILIZER” and “1,258 bags DEL GRO SUPER FOLIAR FERTILIZER.” The same was also signed by accused **Fua** and ticked the check box indicating that the said items are “complete.”<sup>235</sup>

On **May 5, 2004**, the DA-RFU7 prepared Disbursement Voucher (DV) No. 101-2004-5-1342 (first tranche) in the amount of Php5,200,000.00 to be disbursed to the municipality.<sup>236</sup>

Thereafter, or on **May 6, 2004**, the DA-RFU7 issued Land Bank of the Philippines Check Nos. 19659,<sup>237</sup> 19660,<sup>238</sup> 19661,<sup>239</sup> 19662,<sup>240</sup> 19663,<sup>241</sup> and 19664<sup>242</sup> covering the above-mentioned amount. On even date, the municipality issued Official Receipt No. 1598157 evidencing the receipt of the amount of Php5,200,000.00 from the DA-RFU7.<sup>243</sup>

On **May 7, 2004**, the municipality prepared DV No. 300-0405-6-42 in the amount of Php4,990,752.00, in favor of Mangopina for the purchase of the subject items. The said DV was signed by accused **Fua** (“Cash Advances necessary, lawful, and under his direct supervision,” “Approved for Payment”), accused **Monte** (“Completeness and propriety of supporting documents/previous cash advance liquidated/existence of funds held in trust”), accused **Tomogsoc** (“Cash Available”), and accused

<sup>234</sup> Exhibit A-58-i

<sup>235</sup> Exhibit A-58-j

<sup>236</sup> Exhibit A-57

<sup>237</sup> Payable to the Municipality of Lazi in the amount of Php1,000,000.00.

<sup>238</sup> Payable to the Municipality of Lazi in the amount of Php1,000,000.00.

<sup>239</sup> Payable to the Municipality of Lazi in the amount of Php1,000,000.00.

<sup>240</sup> Payable to the Municipality of Lazi in the amount of Php1,000,000.00.

<sup>241</sup> Payable to the Municipality of Lazi in the amount of Php1,000,000.00.

<sup>242</sup> Payable to the Municipality of Lazi in the amount of Php200,000.00.

<sup>243</sup> Exhibit A-57-g

Handwritten signatures and initials in black ink. At the top right is a signature that appears to be 'Fua'. Below it is another signature that appears to be 'Monte'. To the left of these is a signature that appears to be 'Tomogsoc'. There are also some initials and a checkmark-like mark.

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**Lu** (“Received Payment”).<sup>244</sup> On even date, Mangopina issued Official Receipt No. 0612 for the amount of Php4,990,752.00 to the municipality.<sup>245</sup>

On **December 17, 2004**,<sup>246</sup> the DA-RFU7 prepared DV No. 101-2004-12-4633 (second tranche) in the amount of Php2,800,000.00 in favor of the Municipality of Lazi for the implementation of the municipality’s “Farm Inputs/Farm Implements Program. On even date, the DA-RFU7 caused the issuance of Land Bank of the Philippines Check Nos. 23034,<sup>247</sup> 23035<sup>248</sup> and 23036.<sup>249</sup> The said amount was received by the municipality on **January 4, 2005**, as evidenced by the municipality’s Official Receipt No. 1598194.<sup>250</sup>

**III. The crime charged and its elements.**

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As hereinbefore mentioned, the accused in this case are charged with a Violation of Section 3 (e) of R.A. No. 3019, as amended. To secure a conviction for the said crime, jurisprudence instructs that the concurrence of **all** the following elements must be proven beyond reasonable doubt:

1. The offender is a public officer;
2. The act was done in the discharge of the public officer’s official, administrative or judicial functions;

<sup>244</sup> Exhibit A-59

<sup>245</sup> Exhibit A-59-a

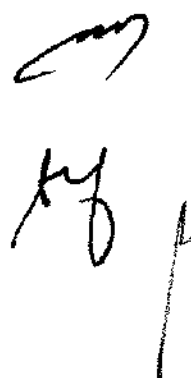
<sup>246</sup> Exhibit A-58

<sup>247</sup> Payable to the Municipality of Lazi in the amount of Php1,000,000.00.

<sup>248</sup> Payable to the Municipality of Lazi in the amount of Php1,000,000.00.

<sup>249</sup> Payable to the Municipality of Lazi in the amount of Php800,000.00.

<sup>250</sup> Exhibit A-58-c

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3. The act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and,
4. The public officer caused any undue injury to any party, including the government, or gave any unwarranted benefits, advantage, or preference.<sup>251</sup>

**a. The first and second elements of the crime charged are present.**

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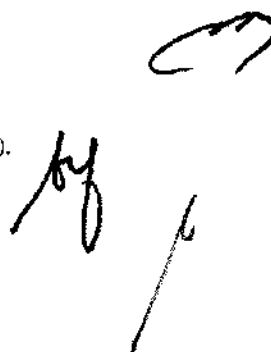
During the pre-trial, the parties stipulated that accused **Fua, Monte, Tomogsoc, Jumawan, Castillon, Jumadla** and Marchan were [1] the same persons charged in the *Information* in this case, and [2] public officers at the time material to this case being then the municipal mayor, municipal accountant, municipal treasurer/BAC member, municipal engineer/BAC member, BAC member, municipal planning and development coordinator, and BAC chairman, respectively, of the Municipality of Lazi, Siquijor.<sup>252</sup> While the parties stipulated that accused **Lu** was a private individual at the time material to this case, jurisprudence holds that even private individuals may be held liable for a Violation of Section 3 (e) of R.A. No. 3019 if they acted in conspiracy with public officers.<sup>253</sup> It is also established that the acts imputed to the accused public officers were performed in the discharge of their official functions.

Thus, the presence of the first and second elements of a Violation of Section 3 (e) of R.A. No. 3019 is undisputed.

<sup>251</sup> *Villarosa v. People*, 939 SCRA 502 (2020).

<sup>252</sup> *Id.*, at p. 730, 751

<sup>253</sup> *Canlas v. People and the Sandiganbayan*, 932 SCRA 309 (2020).

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b. **The third element is likewise present; accused Fua, Castillon, Jumawan, Tomogsoc, and Lu acted with manifest partiality, evident bad faith, and/or gross inexcusable negligence in relation to the questioned procurement.**

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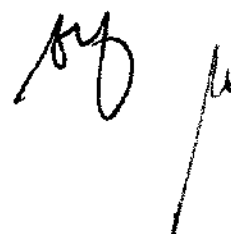
On the third element of a Violation of Section 3 (e) of R.A. No. 3019, jurisprudence teaches that there are three (3) modes of committing the said crime, *i.e.*, through *manifest partiality*, *evident bad faith*, and/or *gross inexcusable negligence*. These modes are not separate offenses. **Proof of the existence of any these three (3) in connection with the prohibited act is enough to convict.**<sup>254</sup>

Case law defines the concept of *evident bad faith* to connote not only bad judgment but also palpably, patently fraudulent, and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will.<sup>255</sup> On the other hand, jurisprudence defines *manifest partiality* as a clear, notorious, or plain inclination or predilection on the part of the accused to favor one side or person rather than the other.<sup>256</sup> Moreover, the Supreme Court defines the concept of *gross inexcusable negligence* as a kind of negligence that is characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious

<sup>254</sup> See *Cabrera, et al., v. People*, 910 SCRA 578 (2019)

<sup>255</sup> See *Fuentes v. People*, 822 SCRA 509 (2017); *Fonacier v. Sandiganbayan*, 235 SCRA 655 (1994)

<sup>256</sup> *Sabaldan, Jr., v. Office of the Ombudsman for Mindanao and Lozada*; G.R. No. 238014, June 15, 2020; *Villarosa v. Ombudsman and Basilio*, 891 SCRA 244 (2019); *Fuentes v. People*, 822 SCRA 509 (2017)



indifference to the consequences insofar as other persons may be affected.<sup>257</sup> It is the omission of that care even inattentive and thoughtless men never fail to take on their own property.<sup>258</sup>

The following discussion narrates the acts of accused **Fua, Castillon, Jumawan, Tomogsoc** and **Lu** which evince their *evident bad faith, manifest partiality, and/or gross inexcusable negligence* in relation to the procurement in issue.

**1. Accused Fua and Tomogsoc signed and issued PR No. 03-06404 ahead of the execution of the subject MOA.**

While prosecution witnesses Jerusalem and Jaugan testified that they did not make any adverse observation regarding the alleged “*premature issuance of a purchase request,*” the evidence on record unmistakably shows that the issuance of the said purchase request was indeed premature.

On its face, PR No. 03-06404<sup>259</sup> indicates that it was issued on **March 12, 2004**.<sup>260</sup> On the other hand, the subject MOA was executed only on **April 6, 2004**, between the Department of Agriculture (DA) Regional Field Unit 7 (DA-RFU7) and the Municipality of Lazi.<sup>261</sup> In fact, the first tranche of Php5,200,000.00 was transferred to the Municipality of Lazi, Siquijor only on **May 6, 2004**,<sup>262</sup> while the second tranche of Php2,800,000.00 was transferred to the same municipality on **January 4, 2005**.<sup>263</sup>

Thus, when accused **Tomogsoc** certified as to the availability of funds in the said PR dated **March 12, 2004**, the same had absolutely no basis because the Municipality of Lazi had not yet entered into any MOA with the DA-RFU7. It must be stressed that

<sup>257</sup> *Id.*; Emphasis supplied

<sup>258</sup> *Id.*

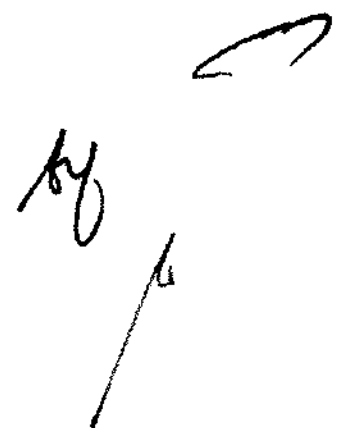
<sup>259</sup> Exhibit A-58-d

<sup>260</sup> Exhibit A-58-d

<sup>261</sup> Exhibit A-56

<sup>262</sup> Exhibit A-57-g

<sup>263</sup> Exhibit A-58-c

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it was through this instrument that the DA-RFU7 agreed to transfer the amount of Php8,000,000.00 for the implementation of the subject project. Thus, when accused **Tomogsoc** issued the said *certification*, there were no funds actually available.

Also, the purpose indicated by accused **Fua** in the said PR, namely: "*Farm Inputs*," had no basis considering that the "*Farm Inputs/Farm Implements Program*" in the lone district of Siquijor and in the province of Siquijor was not yet in effect when accused **Fua** signed the subject PR.<sup>264</sup>

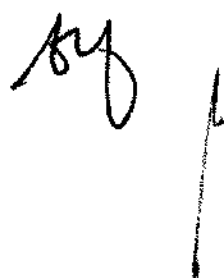
**2. Accused Fua, Castillon, Jumawan and Tomogsoc blatantly disregarded the explicit provisions of R.A. No. 9184 and its Implementing Rules and Regulations on competitive bidding in the procurement of the subject fertilizers.**

Section 10, Article IV of R.A. No. 9184 provides that all procurements shall be done through competitive bidding, except when the head of the procuring entity or his/her duly authorized representative resorts to alternative methods of procurement when justified by certain conditions mentioned under Section 48 of the same law. To be clear, there is nothing from the records of this case which indicates that the accused resorted to any of these alternative methods of procurement. Thus, they were duty-bound to strictly comply with the provisions of R.A. No. 9184 on competitive bidding. However, they disregarded the same and skewed the purported bidding in favor of Mangopina.

**3. Accused Fua, Castillon, Jumawan and Tomogsoc failed to comply with Section 17 of R.A. No. 9184.**

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<sup>264</sup> The second *Whereas Clause* of the Memorandum of Agreement dated April 6, 2004, between the Municipality of Lazi and the DA-RFU7 provides that the amount of Php8,000,000.00, which was received by the DA-RFU7 under SARO Nos. E-04-00156 and E-04-00164 both dated February 3, 2004, was for the implementation of the "*Farm Inputs/Farm Implements Program*" in the lone district of Siquijor and the Province of Siquijor.



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Section 17, Article VI of R.A. No. 9184 requires the procuring entity to prepare bidding documents conforming with the standard forms and manuals prescribed by the Government Procurement Policy Board (GPPB). Pursuant to the same section, said bidding documents shall include the following, namely: [1] Approved Budget for the Contract, [2] Instruction to Bidders, [3] Terms of Reference, [4] Eligibility Requirements, [5] Plans and Technical Specifications, [6] Form of Bid, Price Form, and the List of Goods or Bill of Quantities, [7] Delivery Time or Completion Schedule, [8] Form and Amount of Bid Security, [9] Form and Amount of Performance Security and Warranty, and [10] Form of Contract, and the General and Special Conditions of Contract.

Indeed, aside from PR No. 03-6404 dated March 12, 2004, which was signed by accused **Fua**, the records of this case do not show that the above enumerated bidding documents were prepared by the Municipality of Lazi before Mangopina, Gelly's General Merchandise, and Estajera Store were supposedly allowed to submit their respective bids.

**4. Accused Fua, Castillon, Jumawan and Tomogsoc violated Section 18 of R.A. No. 9184 when they referred to the brand names of the fertilizers in issue in the subject procurement documents.**

Section 18 of R.A. No. 9184 provides that the specifications for the procurement of goods shall be based on **relevant characteristics and/or performance requirements**. The same section expressly prohibits any reference to brand names. In fact, this prohibition is echoed in Section 18 of the Implementing Rules and Regulations (IRR) of R.A. No. 9184.<sup>265</sup> ✓

Again, prosecution witnesses Jerusalem and Jaugan likewise testified before the Court that they did not make any adverse

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<sup>265</sup> IRR-A of R.A. No. 9184 was the applicable rule at the time material to this case. It was approved by the president on September 18, 2003, and took effect on October 8, 2003.

by /

observations in their AOM and audit report regarding the accused's reference to brand names in the procurement in question. The prosecution evidence nonetheless show that the said accused clearly referred to two (2) brand names of fertilizers in the said procurement.

To be sure, prosecution witness Reyes, the current Supervising Agriculturist and the Acting Assistant Chief of the Fertilizer Regulations Division (FRD) of the Department of Agriculture-Fertilizer and Pesticide Authority (DA-FPA), testified that [1] "MRG Liquid Fertilizer" is a product brand name registered under Mangopina with Registration No. 1-31-F-007 dated April 1, 2003, and [2] "Del Gro Super Foliar Fertilizer" is a product brand name registered under JR & JP Enterprises with Registration No. 1-1LP-2110 dated November 8, 2005.<sup>266</sup>

Here, PR No. 03-06404 dated March 12, 2004,<sup>267</sup> the Notice to Bidders dated April 20, 2004,<sup>268</sup> the **undated** Abstract of Quotation,<sup>269</sup> and PO No. 04-00067(A) dated April 20, 2004,<sup>270</sup> all indicate the above-mentioned brand names of the subject fertilizers. Other than the said brand names, there is the conspicuous absence of any technical description and/or specifications of the subject fertilizers in the said procurement documents.

Admittedly, the case of *Martel, et al., v. Sandiganbayan*<sup>271</sup> teaches that Section 54 of COA Circular No. 92-386<sup>272</sup> allows a "non-restrictive reference to brand names," or those made in the **call for bids**, which refers to the act of the office of the provincial or city general services officer to call for bids for open public competition.

<sup>266</sup> p. 665, Vol. IV, Record; Exhibit G-1.

<sup>267</sup> Exhibit A-58-d

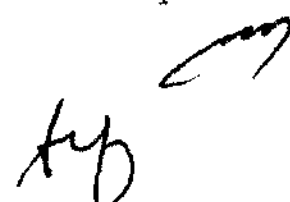
<sup>268</sup> Exhibits A-58-e to g

<sup>269</sup> Exhibit A-58-h

<sup>270</sup> Exhibit A-58-i

<sup>271</sup> *Martel, et al., v. People*, G.R. No. 224720, February 2, 2021.

<sup>272</sup> Section 54. Whenever reference to a manufacturer's brand-name is indicated in the call for bids, it shall be intended to be descriptive, not restrictive, and shall be understood to merely indicate to prospective bidders that brand-names other than those specified, if of equal quality, may be considered, regardless of whether or not a statement to that effect is made in the tender, provided that the bidder shall give full description of his offer accompanied with catalog, literature, and/or sample . . .




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It must be underscored, however, that the Supreme Court categorically ruled in the same case that Section 54 does not apply to the issuance purchase requests. In fact, the procurement law unequivocally mandates that local government units shall only indicate the technical specifications and not specify the particular brand names and makes, to wit:<sup>273</sup>

Hence, when the LGU undertakes the process of requisition of supplies or properties, which the procurement law defines as the formal requesting of supplies or property made through a written request or order,<sup>274</sup> only the technical description of the supplies or properties shall be indicated. **The particular brand names of the goods cannot be specified in the requisition.**<sup>275</sup>

**5. There was no Pre-Procurement Conference.**

Section 20, Article VII of R.A. No. 9184 requires the BAC to hold a pre-procurement conference prior to the issuance of an *Invitation to Bid* (ITB) on **each and every procurement** except in cases of procurement of goods which costs two million pesos (Php2,000,000.00) and below, procurement of infrastructure projects costing five million pesos (Php5,000,000.00) and below, and procurement of consulting services costing one million pesos (Php1,000,000) and below.<sup>276</sup> Certainly, the cost of the subject fertilizers (Php4,990,752.00)<sup>277</sup> exceeded the threshold amount in cases of procurement of goods. Thus, the conduct of a pre-procurement conference by the BAC was mandatory.



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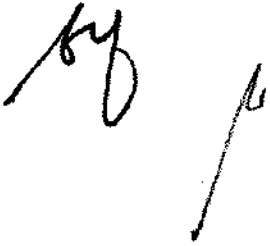
<sup>273</sup> p. 20, *Martel, et al., v. People*, G.R. No. 224720, February 2, 2021.

<sup>274</sup> Footnote omitted.

<sup>275</sup> Emphasis supplied.

<sup>276</sup> Section 20.2., IRR-A of R.A. No. 9184. (IRR-A of R.A. No. 9184 was the applicable rule at the time material to this case. It was approved by the president on September 18, 2003, and took effect on October 8, 2003).

<sup>277</sup> Exhibit A-59



**6. The subject bidding was not properly advertised, no Invitation to Bid was issued, and there was no pre-bid conference conducted.**

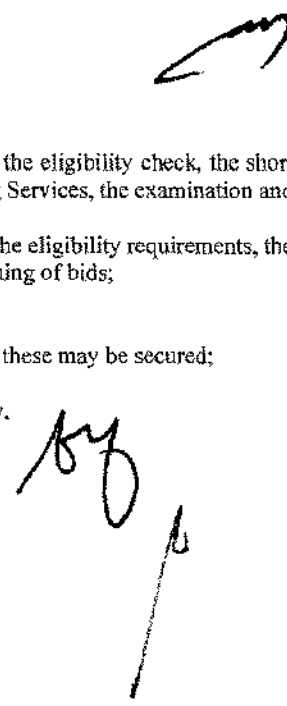
Moreover, Section 21 of the same law requires that all *Invitations to Bid* for contracts under competitive bidding be advertised by the procuring entity consistent with the principle of transparency and competitiveness. As earlier mentioned, PR No. 03-6404 was signed by accused **Fua** on March 12, 2004. Thereafter, he signed an undated "*Notice to Bidders*." This "*Notice to Bidders*," which purportedly reflected the **handwritten** bids submitted by Mangopina, Gelly's General Merchandise and Estajera Store, became the basis for the "*Abstract of Quotation*" signed and prepared by accused **Castillon, Jumawan and Tomogsoc**. Therein, they recommended to accused **Fua** the award of the subject project to Mangopina which was represented by accused **Lu**. However, there is absolutely no showing that the said "*Notice to Bidders*" was properly advertised to ensure the widest possible dissemination thereof. In fact, the records do not show that the said document had any semblance of an *Invitation to Bid* or complied with its prescribed form under the law.<sup>278</sup>

It is also important to underscore that Section 22.1 of the Implementing Rules and Regulations of R.A. No. 9184 requires the BAC to convene at least one (1) pre-bid conference in contracts to be bid with an approved budget of one million pesos (Php1,000,000.00) or more in order to clarify and/or explain any of

<sup>278</sup> Section 21. *Advertising and Contents of the Invitation to Bid*. . . .

The Invitation to Bid shall contain, among others:

- (a) A brief description of the subject matter of the Procurement;
- (b) A general statement on the criteria to be used by the Procuring Entity for the eligibility check, the short listing of prospective bidders, in the case of the Procurement of Consulting Services, the examination and evaluation of Bids, and post-qualification;
- (c) The date, time and place of the deadline for the submission and receipt of the eligibility requirements, the pre-bid conference if any, the submission and receipt of bids, and the opening of bids;
- (d) The Approved Budget for the Contract to be bid;
- (e) The source of funds;
- (f) The period of availability of the Bidding Documents, and the place where these may be secured;
- (g) The contract duration; and,
- (h) Such other necessary information deemed relevant by the Procuring Entity.





the requirements, terms, conditions, and specifications stipulated in the bidding documents.

Again, the records of this case are bereft of any showing that a pre-bid conference was held in relation to the procurement in issue. The non-conduct thereof is the logical consequence of non-preparation of the bidding documents by the BAC in this case.

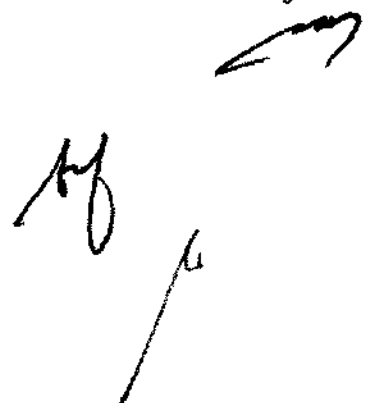
**7. The BAC did not review any eligibility requirement of Mangopina and there was no proper bid evaluation done by the BAC in the questioned procurement.**

Section 23.1 of the Implementing Rules and Regulations of R.A. No. 9184 requires the bidders to submit its eligibility requirements (*Class A Documents* – Legal, Technical, Financial; and *Class B Documents* – valid joint venture agreement, in case of joint venture, and a letter authorizing the BAC or its duly authorized representative/s to verify any or all of the documents submitted for the eligibility check)<sup>279</sup> to the BAC in a sealed envelope duly marked as such. In turn, the BAC shall determine if each prospective bidder is eligible to participate in the bidding by examining the completeness of each prospective bidder/s eligibility requirements or statements against a checklist of requirements, using a non-discretionary “pass/fail” criteria. The BAC shall determine whether the said bidders are “eligible” or “ineligible.”<sup>280</sup>

Here, the records show that except for the above-mentioned “*Notice to Bidders*,” accused BAC members did not even require/receive the eligibility requirements or statements from Mangopina, Gelly’s General Merchandise and Estajera Store. Without the said eligibility requirements, accused BAC members **Castillon, Jumawan** and **Tomogsoc** had nothing to evaluate during the supposed Bid Evaluation Phase of the subject

<sup>279</sup> Section 23.6., IRR-A of R.A. No. 9184.

<sup>280</sup> Section 23. 2, *Id.*

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procurement.<sup>281</sup> Lamentably, the said accused weighed on the bids of the said purported bidders without prior determination of their respective eligibilities; they simply relied on the price that was submitted by Mangopina in the said "Notice to Bidders" and declared its bid as "the lowest advantageous to the government." Notably, the said recommendation made by accused **Castillon**, **Jumawan** and **Tomogsoc** was approved by accused **Fua**.

**8. There was no post-qualification proceedings.**

Section 34 of R.A. No. 9184 requires that a bidder with the lowest calculated bid, in the case of goods and infrastructure projects, undergo verification and validation on whether the said bidder has passed all the requirements and conditions as specified in the bidding documents. Section 34.2, Rule X of the IRR-A<sup>282</sup> of R.A. No. 9184 prescribes the requirements (Legal, Technical and Financial) to be considered by the BAC during post-qualification. Also, case law provides that post-qualification is that stage in the procurement process where the statements and documents submitted by the bidder with the lowest calculated bid are supposed to be **verified, validated, and ascertained by the BAC or BAC TWG.**<sup>283</sup>

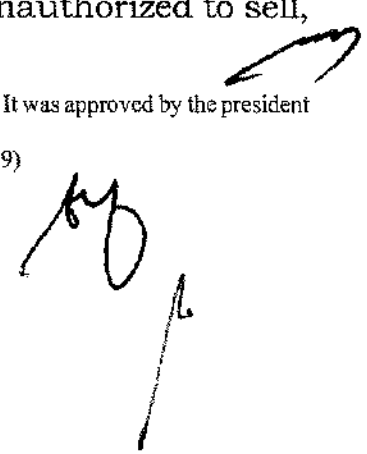
In this case, however, the records do not show that the BAC conducted any post-qualification proceedings before it allowed Mangopina to deliver the subject fertilizers.

Had post-qualification proceedings been conducted on the subject procurement, accused **Castillon**, **Jumawan**, **Tomogsoc** and **Fua** could have readily discovered that Mangopina was [1] unqualified to enter into any kind of contract with the municipality because it did not possess a valid business permit, and [2] pursuant to Section 9 of P.D. No. 1144, it was unauthorized to sell,

<sup>281</sup> Sections 30 to 33, R.A. No. 9184

<sup>282</sup> IRR-A of R.A. No. 9184 was the applicable rule at the time material to this case. It was approved by the president on September 18, 2003, and took effect on October 8, 2003.

<sup>283</sup> Office of the Ombudsman v. Chipoco and Baganutan, 914 SCRA 533 (2019)

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or offer for sale fertilizers because its “Manufacturer-Distributor” license had already expired at the time material to this case. Instead, accused BAC members **Castillon, Jumawan, Tomogsoc** recommended the award of contract to Mangopina and on **April 20, 2004**, accused **Fua** and **Lu** signed PO No. 04-00067(A) which paved the way for Mangopina to deliver the subject fertilizers on **April 26, 2004**.<sup>284</sup>

**9. There was no Notice of Award and no formal contract entered into between the Municipality of Lazi, Siquijor and Mangopina for the delivery of the subject fertilizers.**


Section 37 of R.A. No. 9184 provides that where the Head of the Procuring Entity approves the recommendation of award, the Head of the Procuring Entity or his/her duly authorized representative shall immediately issue the Notice of Award to the bidder with the “*Lowest Calculated Responsive Bid*” or “*Highest Rated Responsive Bid*,” as the case may be. The same section further instructs that within ten (10) calendar days from receipt of the Notice of Award, the winning bidder shall formally enter into a contract with the Procuring Entity.

Here, the records reveal that after the BAC allegedly evaluated the purported bids of Mangopina, Gelly’s General Merchandise and Estajera Store on April 20, 2004, it recommended the award of the subject project to Mangopina on the same day, and the same was immediately approved by accused **Fua**.<sup>285</sup> Conspicuously, Purchase Order (P.O.) No. 04-00067(A), which directed Mangopina to deliver the subject fertilizers, was also issued **on the same day**. This, despite that no notice of award was issued to Mangopina, no *performance security bond* was posted by Mangopina,<sup>286</sup> and no

<sup>284</sup> Exhibit A-58-j

<sup>285</sup> Exhibit A-58-h

<sup>286</sup> Section 39. *Performing Security* - Prior to the signing of the contract, the winning bidder shall, as a measure of guarantee for the faithful performance of a compliance with his obligations under the contract prepared in accordance with the bidding documents, be required to post a performance security in such form and amount as specified in the bidding documents.



formal contract<sup>287</sup> for the delivery of the fertilizers in issue was executed between the Municipality of Lazi, Siquijor and Mangopina.

The Court fails to find any compelling reason for the accused to dispense with the said requirements and forthwith allow Mangopina to deliver the subject fertilizers. Mangopina thereafter received the amount of Php4,990,752.00 as payment for the said fertilizers as evidenced by Land Bank Check No. 65800 dated May 7, 2004, which was signed by accused **Tomogsoc** and **Fua**.<sup>288</sup> Interestingly, the said check was made payable to accused Milne and not Mangopina<sup>289</sup> although Mangopina issued Official Receipt No. 0612 evidencing its receipt of the above-mentioned amount.<sup>290</sup>

**10. There was no performance security bond posted by Mangopina.**

Section 39 of R.A. No. 9184<sup>291</sup> requires the posting of the winning bidder of a *performance security bond* prior to the signing of the contract. R.A. No. 9184 further declares that the posting of a *performance security bond* by the winning bidder serves as a guarantee for the faithful performance of the said bidder's obligations under the contract. If the said bidder passes all the criteria for post-qualification, his/her bid shall be considered as the "*lowest calculated responsive bid*."<sup>292</sup>

Again, the testimonies of prosecution witnesses Jerusalem<sup>293</sup> and Jaugan<sup>294</sup> confirm that they did not have any adverse

<sup>287</sup> *Id.*

<sup>288</sup> Exhibit A-59-a

<sup>289</sup> Exhibit A-59-a


<sup>290</sup> Exhibit A-59-b

<sup>291</sup> Section 39. *Performing Security* – Prior to the signing of the contract, the winning bidder shall, as a measure of guarantee for the faithful performance of a compliance with his obligations under the contract prepared in accordance with the bidding documents, be required to post a performance security in such form and amount as specified in the bidding documents.

<sup>292</sup> Section 34, R.A. No. 9184.

<sup>293</sup> pp. 67-68, TSN, June 2, 2022.

<sup>294</sup> pp. 76-77, TSN, June 7, 2022.

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observation regarding the issue of “*lack of performance security bond*” in relation to the procurement subject matter of this case.

What is telling, however, is the *Counter-Affidavit* dated December 5, 2016, of accused Marchan, which was submitted before the Office of the Ombudsman during the preliminary investigation of this case. Therein, he expressly admitted that the BAC did not anymore require the winning bidder to post a *performance security bond* in the subject transaction because the BAC “*felt no need for the posting of the qualification bond since the goods were delivered ahead of payment.*”<sup>295</sup> However, the BAC members absolutely had no discretion to dispense with the posting of a *performance security bond* as it is a requirement specially mandated by law.

Section 40 of R.A. No. 9184 and Section 40.3 of its IRR are unmistakable in their directive to the BAC should the winning bidder fail to post the required performance security within the period stipulated in the bidding documents, thus:

**Section 40. Failure to Enter into Contract and Post Performance Security.** – If, for justifiable causes, the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid fails, refuses or is otherwise unable to enter into contract with the Procuring Entity, ***or if the bidder fails to post the required performance security within the period stipulated in the Bidding Documents, the BAC shall disqualify the said bidder and shall undertake post-qualification for the next-ranked Lowest Calculated Bid or Highest Rated Bid. This procedure shall be repeated until an award is made. However, if no award is possible, the contract shall be subject to a new bidding.***<sup>296</sup>

<sup>295</sup> p. 26, Vol. I, Record

<sup>296</sup> Emphasis supplied.

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40.3. In the case of failure, refusal, or inability of the bidder with the Single Calculated/Rated Responsive Bid to enter into contract and post the required Performance Security, as provided in this Section, **the BAC shall disqualify the said bidder, and shall declare the bidding a failure and conduct a re-bidding with re-advertisement and/or posting,**<sup>297</sup> as provided for in Sections 21 and 25 of this IRR-A. Should there occur another failure of bidding after the conduct of the contract's re-bidding, the procuring entity concerned may enter into a negotiated procurement.

Based on the above provisions, accused BAC members **Castillon, Jumawan** and **Tomogsoc**, and accused **Fua**, as the head of the procuring entity, should have required Mangopina and accused **Lu** to post a *performance security bond* before it was awarded the subject project, and, in case of Mangopina's failure to comply with the said directive, it should have been disqualified. However, as earlier mentioned, P.O. No. 04-00067(A), which directed Mangopina to deliver the subject fertilizers, was hastily prepared and signed by accused **Fua** even without a Notice of Award and a formal contract.

Taken altogether, the above-mentioned established facts indubitably show that accused **Fua, Castillon, Jumawan** and **Tomogsoc** allowed Mangopina and accused **Lu** to deliver the subject items without complying with the above-enumerated statutory requirements.

Unquestionably, as the then mayor and members of the BAC of the Municipality of Lazi, Siquijor accused **Fua, Castillon, Jumawan** and **Tomogsoc** were expected to know and comply with the provisions of R.A. No. 9184 and its Implementing Rules and Regulations. Instead, the records of this case exceedingly demonstrate that they hastily conducted the subject procurement in blatant violation of the applicable law and rules.

<sup>297</sup> Emphasis supplied.

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**11. Mangopina (represented by accused Lu) was unqualified to supply the subject fertilizers at the time material to this case.**

The records show that accused **Lu** signed the following documents on behalf of Mangopina, to wit:

1. Undated *Notice to Bidders* wherein she submitted Mangopina's bid for the supply of "MRG Liquid Fertilizer" at Php1,550.00 per unit and "Del Gro Super Foliar Fertilizer" at Php1,550.00 per unit; and,<sup>298</sup>
2. PO No. 04-00067(A) dated April 20, 2004, wherein she committed, on behalf of Mangopina, to deliver the subject fertilizers within the time agreed upon, and to pay a penalty of one-tenth (1/10) of one percent (1%) for every delay shall be imposed.<sup>299</sup>

Exhibit D-49-a, or the *Certification* dated June 20, 2022, issued by Edgar T. Villanueva, City Treasurer of Quezon City, shows that Mangopina did not pay for the renewal of its mayor's permit and license for the years **2003** and **2004**.

As above mentioned, prosecution witness Africa, who is currently the division head of the Management Information System, Records and Archiving Division (MIS-RAD) of the Business Permits and Licensing Department (BLPD) of the local government of Quezon City, testified that [1] a mayor's permit is similar to a business permit;<sup>300</sup> and [2] it was the usual practice in their office to allow business permit holders to simply pay for the renewal fee and submit its supporting documents after payment.<sup>301</sup>

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<sup>298</sup> *Id.*

<sup>299</sup> Exhibit A-58-i

<sup>300</sup> p. 18, TSN, June 14, 2022.

<sup>301</sup> *Id.*, at p. 37

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Moreover, prosecution witness Bastasa, who currently serves as Local Treasury Operations Officer III at the Records, Verification and Delinquency Section of the Taxes and Fees Division, Treasury Department, Quezon City, confirmed Mangopina's non-payment of the renewal of its business permit for the years 2003 and 2004.<sup>302</sup>

Based thereon, the Court finds that Mangopina had no valid business permit when it entered into the questioned transaction with the Municipality of Lazi considering that it failed to pay the renewal of its business permit at the time material to this case.

Also, the prosecution evidence show that Mangopina's "Manufacturer-Distributor" License No. 198 issued by the Department of Agriculture – Fertilizer and Pesticide Authority (DA-FPA) **expired on August 21, 2002.**<sup>303</sup> While prosecution witness Reyes testified before the Court that Mangopina had a valid distributor license (License No. 201 with expiration date July 26, 2005) at the time material to this case, it must be pointed out that the same witness confirmed that Mangopina was already barred from selling its products to the market when it entered into the subject transaction because its manufacturer's license (License No. 104 with expiration date January 14, 2004) had already expired. More importantly, witness Reyes further revealed that no person can engage in the business of manufacturing/sale/distribution of fertilizers unless he/she possesses a valid [1] manufacturer/distributor license, **and** [2] certificate of product registration both issued by the FPA.<sup>304</sup>

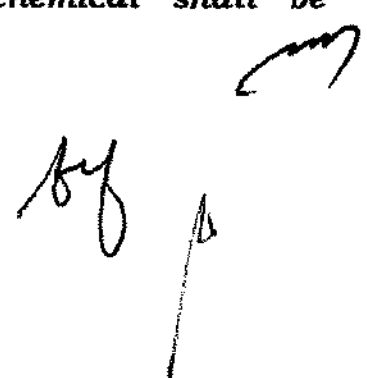
A reading of the said "Manufacturer-Distributor" License No. 198 reveals that it was issued by the DA-FPA by virtue of Presidential Decree (P.D.) No. 1144. Section 9 thereof provides, thus:

**Section 9. Registration and Licensing. – No pesticides, fertilizer, or other agricultural chemical shall be**

<sup>302</sup> p. 585, Vol. IV, Record

<sup>303</sup> Exhibit D-45

<sup>304</sup> p. 24, TSN, September 20, 2022.





exported, imported, manufactured, formulated, stored distributed, sold or offered for sale, transported, delivered for transportation or used unless it has been duly registered with the FPA or covered by a numbered provisional permit issued by FPA<sup>305</sup> for use in accordance with the conditions as stipulated in the permit. Separate registrations shall be required for each active ingredient and its possible formulations in the case of pesticides or for each fertilizer grade in the case of fertilizer.

- c. **Accused Fua, Castillon, Jumawan, Tomogsoc and Lu conspired with one another in giving unwarranted benefit, advantage or preference to Mangopina.**

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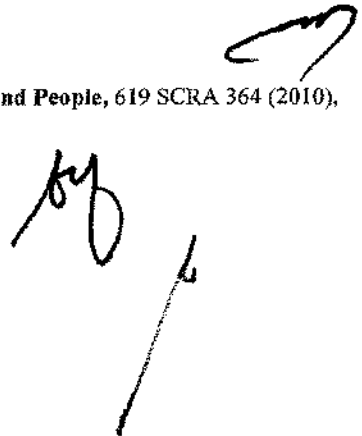
It is jurisprudentially settled that there are two (2) ways by which a public official violates Section 3 (e) of R.A. No. 3019 in the performance of his/her functions, namely: [1] by causing *undue injury* to any party, including the government, **or** [2] by giving any party any *unwarranted benefit, advantage, or preference*. This does not, however, indicate that each mode constitutes a distinct offense.<sup>306</sup> Rather, an accused may be charged under either mode or both.<sup>307</sup> Here, the accused are charged under both modes.

Jurisprudence instructs that in the second punishable act, *i.e., by giving unwarranted benefits, advantage, or preference to a private party*, proof of the extent or quantum of damage is not

<sup>305</sup> Emphasis supplied.

<sup>306</sup> *Cabrera v. People*, 910 SCRA 578 (2019), *Saludaga v. Sandiganbayan and People*, 619 SCRA 364 (2010), *Sison v. People*, 614 SCRA 670 (2010)

<sup>307</sup> *Id.*

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essential. This does not require proof of actual damage as it is sufficient that the accused has given "unjustified favor or benefit to another."<sup>308</sup> In the case of **Uriarte v. People**,<sup>309</sup> the Supreme Court defined the words "unwarranted," "advantage" and "preference," thus:

"[U]nwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.

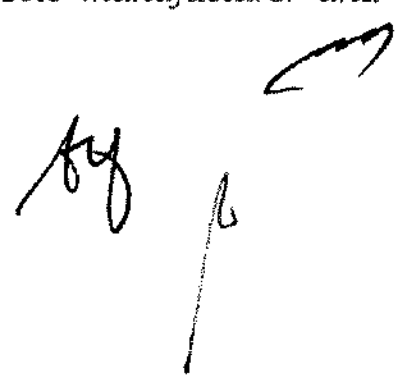
As earlier mentioned, Mangopina had no valid business permit and a valid "Manufacturer-Distributor" license issued by the DA-FPA when it submitted its bid to the municipality and even when it delivered the subject items. Also, the evidence show that accused **Fua, Castillon, Jumawan and Tomogsoc** utterly failed to comply with the applicable provisions of R.A. No. 9184 and hastily allowed Mangopina to deliver to the Municipality of Lazi, Siquijor the subject fertilizers.

There are other tell-tale signs extant in the records of this case that positively evince that the said accused acted with manifest partiality and thereby gave unwarranted benefit to Mangopina.

It is undisputed that "MRG Liquid Fertilizer" and "Del Gro Super Foliar Fertilizer" are brand names of fertilizers which all appeared in the procurement documents subject of this case.

The prosecution evidence show that as early as **November 5, 2001**, Mangopina, through its vice-president for finance, accused Milne, issued a "Certification" stating that [1] "Mangopina Trading Co., Inc., a Philippine Corporation, is the sole manufacturer and

<sup>308</sup> **Abubakar v. People**, 868 SCRA 489 (2018)  
<sup>309</sup> 511 SCRA 471 (2006)

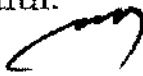


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distributor of the product "M-R-G" in the Philippines," [2] "no other dealer can offer prices and terms more advantageous to the government," and [3] "Mangopina Trading has no [authorized] distributor/dealer in the island [of] Siquijor."<sup>310</sup> The records further reveal that on **March 6, 2004**, or six (6) days before accused **Fua** signed PR No. 03-06404 on **March 12, 2004**, accused Milne wrote to accused **Fua** offering the supply of various agricultural products, which included "DELGRO Products such as liquid foliar fertilizers and granular fertilizers NPK 10-18-10."<sup>311</sup> Worse, on **March 12, 2004**, or one (1) month before Mangopina was selected<sup>312</sup> by accused **Fua, Castillon, Jumawan** and **Tomogsoc** as the supplier for the subject fertilizers, accused Milne already issued a *Letter of Authority* designating accused **Lu** as Mangopina's representative, and giving her the authority "[t]o sign any pertinent paper or document relating to Mangopina's transaction in Lazi, Siquijor."<sup>313</sup>

The above established facts, taken collectively with the hereinbefore demonstrated brazen violations of the procurement laws, indubitably prove that the selection of Mangopina (represented by accused **Lu**) by accused **Fua, Castillon, Jumawan**, and **Tomogsoc** to supply the Municipality of Lazi, Siquijor with the subject fertilizers had been pre-ordained. This immutably establishes their manifest partiality in favor of Mangopina. Such manifest partiality undoubtedly gave Mangopina unwarranted benefit as the same accused precisely completely disregarded the procedure prescribed by law obviously to ensure that Mangopina will be, as in fact it was, awarded the subject contract.

Furthermore, even the supposed participation of Gelly's General Merchandise in the purported public bidding subject of this case is highly doubtful.




<sup>310</sup> Exhibit D-35

<sup>311</sup> Exhibit D-22

<sup>312</sup> Accused Castillon, Jumawan and Tomogsoc recommended the award of the subject project to Mangopina on April 20, 2004. (Exhibit A-58-h); PO No. 04-00067(A) which directed Mangopina to deliver the subject fertilizers was issued by the Municipality on April 20, 2004. (Exhibit A-58-i)

<sup>313</sup> Exhibit D-96



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To be sure, prosecution witness Jaugan testified that she personally interviewed Soledad Duhaylungsod, owner of Gelly's General Merchandise, regarding the said procurement. Duhaylungsod denied [1] signing a *Notice to Bidders* in relation to the procurement of the subject fertilizers; and [2] writing the amount of "P1,870.00" which appeared on the "Unit Price" portion of the said document, thus:

Justice Moreno: I was only asking about your findings which are not included in the Audit Observation of Corazon Jerusalem.

Witness Jaugan: I approached Gelly Store, the owner of Gelly and when I asked whether it was her signature in the bid form, she denied it. She said it's not her signature and I asked --- (*Interrupted*)

Q: Was that verification in writing or made orally?

A: Personally, I went there, Your Honor.

Q: You went there to verify?

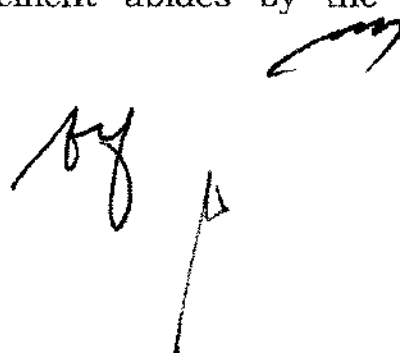
A: Yes.

Q: Was that verification, Ma'am, reduced into writing?

A: Yes, there was an Affidavit duly notarized that it was not her signature.<sup>314</sup>

Undeniably, the said accused had the responsibility of ensuring that every government procurement abides by the

<sup>314</sup> p. 72, TSN, June 7, 2022; Exhibit D-148



standards and procedure set forth under R.A. No. 9184 and its Implementing Rules and Regulations.<sup>315</sup> However, they utterly failed to discharge such responsibility. Instead, they violated the pertinent laws and reduced the questioned procurement to a mere charade obviously to give unwarranted benefit to Mangopina through their manifest partiality.

It is jurisprudentially settled that conspiracy takes two (2) forms.<sup>316</sup> The first is the express form, which requires proof of an actual agreement among all the co-conspirators to commit the crime.<sup>317</sup> The second form is implied conspiracy considering that conspiracies are not always shown to have been expressly agreed upon.<sup>318</sup> It exists when two (2) or more persons are shown to have aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment.<sup>319</sup>

Taken collectively, the individual acts of the accused demonstrate that they were animated by a common criminal design by acting with manifest partiality which gave unwarranted benefit to Mangopina.

In sum, the Court holds that accused **Castillon, Jumawan, Tomogsoc** and **Fua's** blatant violations of the applicable procurement laws, rules and regulations reveal their common criminal design to rig the purported public bidding in this case to unduly favor Mangopina and accused **Lu**. Consequently, the said accused should be convicted of a Violation of Section 3 (e) of R.A. No. 3019.



<sup>315</sup> Section 12, R.A. No. 9184

<sup>316</sup> **People v. De Guzman, et al.**, G.R. No. 241248, June 23, 2021.

<sup>317</sup> *Id.*

<sup>318</sup> *Id.*

<sup>319</sup> *Id.*



d. **The prosecution evidence failed to sufficiently show that accused Monte and Jumadla acted with evident bad faith, manifest partiality, or gross inexcusable negligence.**

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On the liabilities of accused **Monte** and **Jumadla**, there is absolutely nothing from the records of this case that demonstrates their role in the selection of Mangopina as the supplier of the subject fertilizers. Without a positive showing that the said accused were involved in the above-mentioned process, the Court finds that the prosecution evidence fell short in sufficiently proving its allegation that they acted with *manifest partiality* or that they had a plain inclination or predilection to favor Mangopina over another.

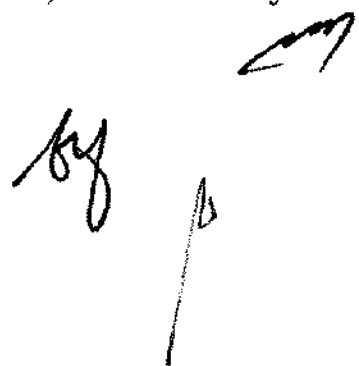
The Court further finds that the prosecution has not adduced sufficient evidence that accused **Monte** and **Jumadla** acted with *evident bad faith* and/or *gross inexcusable negligence*.

The prosecution evidence reveals that on **April 20, 2004**, accused **Monte** certified as to the availability of funds in PO No. 04-00067(A) for the payment of the subject fertilizers.<sup>320</sup>

In the case of **Macairan v. People**,<sup>321</sup> the Supreme Court found that petitioners Du and Agustin correctly asserted that their signatures appearing in the purchase order and disbursement voucher subject of their case, signifying the availability of funds, which was supported by proper documentation, do not satisfy the

<sup>320</sup> Exhibit A-58-i

<sup>321</sup> G.R. No. 215104, March 18, 2021.

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requisite quantum of proof to hold them liable as co-conspirators, much less hold them liable for the crime charged against them.<sup>322</sup> Therein, the High Tribunal ruled that not every person who signs documents required in standard operating procedures automatically becomes a conspirator in a crime.<sup>323</sup> There must be other positive and clear evidence showing each of the accused's conscious and intentional participation in the planning, preparation and execution of the crime charged.<sup>324</sup>

To recount, the DA-RFU7 and the Municipality of Lazi entered into a MOA on **April 6, 2004**, wherein the former agreed to transfer to the latter the amount of Php8,000,000.00 for the implementation of the "*Farm Inputs/Farm Implements Program*" in the lone district of Siquijor and in the Province of Siquijor. While the first tranche in the amount of Php5,200,000.00 was received by the municipality only on **May 6, 2004**, the said MOA had already effectively set aside funds to cover the implementation of the above-mentioned *farm inputs program*. Thus, accused Monte had a colorable basis to issue such a certification. This circumstance negates a conscious and intentional participation in the planning, preparation and/or execution of the crime charged against her.

On the part of accused **Jumadla**, the records reveal that in the *Inspection & Acceptance Report* (IAR) dated April 20, 2004, the said accused certified that he "*inspected, verified and found OK [a]s to quantity and specifications*" the subject fertilizers delivered by Mangopina to the Municipality of Lazi.<sup>325</sup>

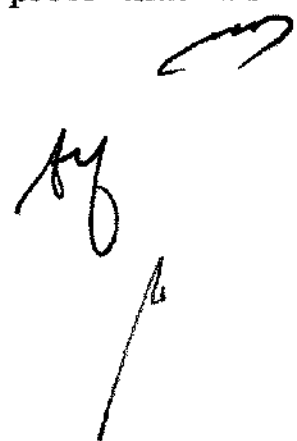
To be clear, aside from the signature of accused **Jumadla** appearing on the subject IAR, the prosecution did not present any other evidence showing other acts performed by him wherein he may have deviated from his official capacity as the inspection officer of the municipality in order to perpetrate the crime charged against him. There is likewise no adequate proof that will

<sup>322</sup> p. 23, *Macairan v. People*, G.R. No. 215104, March 18, 2021.

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> Exhibit A-58-j



contradict the above-mentioned *certification* made by accused **Jumadla**. While the said *certification* may be viewed as self-serving, it must be emphasized that prosecution witness Jerusalem admitted in open Court that the subject items were delivered by Mangopina to the municipality on April 26, 2004.<sup>326</sup>

On this issue, prosecution witness Jaugan testified that the municipal agricultural officer of the Municipality of Lazi submitted to her a *distribution list* of the fertilizers in question. She noted, however, that she cannot confirm the truth of the contents thereof because it was unclear.<sup>327</sup> The testimony of the said witness on the issue of the alleged *lack of project implementation* is also noteworthy, to wit:

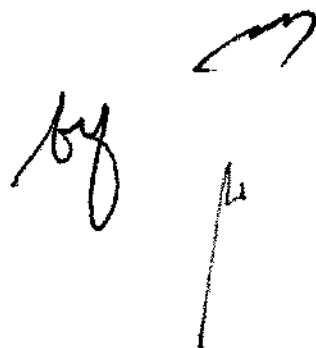
Justice Moreno: No findings. Lack of proof of the projects implementation. When you reviewed the Audit Observation of Corazon Jerusalem, did you find any of this lack of proof of projects implementation? And, when you prepared your Audit Report, did you make any findings on this that there was this lack of proof of projects implementation?

Witness Jaugan: I may say it lacks proof because it's doubtful on our part.

Q: Okay. Let's take a look at your Audit Report. Where [in] your Audit Report did you have findings regarding this lack of proof of projects implementation? So that the Court will be properly guided when it will prepare its decision. Saan po dito? Could you guide the Court? Looking at Exhibit E-4, where in this Audit Report po

<sup>326</sup> p. 40, TSN, June 2, 2022.

<sup>327</sup> pp. 40-48, TSN, June 7, 2022

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can we see that there was a finding of lack of proof of projects implementation?

A: I mentioned here, Your Honor. There was delayed ---  
*(Interrupted)*.

...

A: No. 6, my report itself to the Ombudsman.

Q: Wala akong makitang No. 6. No. 5 *"Differences were noted between the two (2) Certificates."* Asan yung No. 6 dito?

A: I think they did not include --- *(Interrupted)*

...

Q: Okay. Can you see No. 6 po in Exhibit E-6?

A: E-6, wala naman No. 6 dito.

Q: Wala ka namang makikita kasi wala nga. Ma'am, you will not see No. 6 kasi nga po wala. I'm just asking whether you will confirm it.

A: Yes.

Q: You will confirm that there is no No. 6 in E-6. Yes or no?

A: ***It was deleted. Yeah, no, no. Your Honor.***

Q: Okay. It was deleted. Make it of record that the answer of the witness is "it was deleted." Okay, that's all Madam witness. Other concerns, none? So we can excuse her now? We're done with her?

... 328



<sup>328</sup> pp. 78-83, TSN, June 7, 2022; Emphasis supplied.



Plainly, while prosecution witness Jaugan stated that she came up with a finding regarding the lack of proof of project implementation in her audit report, she nevertheless admitted that the said finding was deleted therefrom. The cause of the supposed deletion of the said finding was left unexplained and remains unclear. Thus, considering that there is doubt on the issue of the delivery/non-delivery of the subject fertilizers, the Court holds that the same must be resolved in favor of accused **Jumadla** applying the *in dubio pro reo* principle.<sup>329</sup>

It bears stressing that the Supreme Court has consistently ruled that the presumption of innocence of an accused is a basic constitutional principle fleshed out by the procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt.<sup>330</sup> Conviction must rest no less than on hard evidence showing that the accused, with moral certainty, is guilty of the crime charged.<sup>331</sup> Moreover, case law instructs that evidence must be closely examined under the lens of judicial scrutiny and that conviction must flow only from the moral certainty that guilt has been established beyond reasonable doubt.<sup>332</sup> Short of these constitutional mandate and statutory safeguard, that a person is presumed innocent until the contrary is proved, the Court is then left without discretion and is duty bound to render a judgment acquittal.<sup>333</sup>

Taken altogether, the Court holds that the accused **Monte** and **Jumadla** are entitled to an acquittal due to the prosecution's failure to prove their guilt beyond reasonable doubt.

**WHEREFORE**, the Court finds accused **Orville Ano-Os Fua, Sue Agnes Aljas Castillon, Natalio Bongcawel Jumawan, Jr., Rose Marie Villacampa Tomogsoc, and Merlyn Estallo Lu GUILTY BEYOND REASONABLE DOUBT** of a Violation of Section

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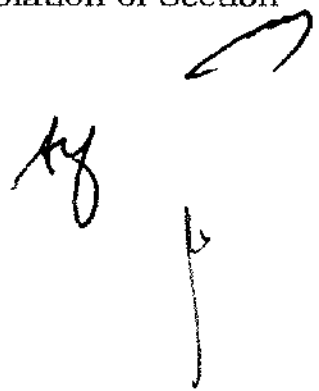
<sup>329</sup> *People v. Temporada*, 574 SCRA 258 (2008)

<sup>330</sup> *Suba v. Sandiganbayan*, G.R. No. 235418, March 3, 2021.

<sup>331</sup> *Id.*, See also *People v. Ansano*, G.R. No.232455, December 2, 2020

<sup>332</sup> *Id.*

<sup>333</sup> *Id.*, See also *People v. Claro*, 822 SCRA 365 (2017)

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**Decision**

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3 (e) of R.A. No. 3019, as amended. Accordingly, they are hereby sentenced to suffer the indeterminate penalty of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, and to suffer the penalty of perpetual disqualification from holding public office.

Moreover, accused **Teodoro Gom-Os Jumadla, Jr's** "Demurrer of Evidence" dated March 3, 2023,<sup>334</sup> is **GRANTED**. He is **ACQUITTED** of the crime of charged for the failure of the prosecution to prove his guilt beyond reasonable doubt.

Accused **Ana Marie Leilani Sumalpong Monte** is likewise **ACQUITTED** of a Violation of Section 3 (e) of Republic Act No. 3019, as amended, for the failure of the prosecution to prove her guilt beyond reasonable doubt.




Accordingly, the *Hold Departure Orders* issued against accused Jumadla, Jr., and Monte are hereby **LIFTED** and **SET ASIDE**. Also, the bail bonds posted by them for their provisional liberty are ordered released subject to the usual auditing and accounting requirements.

Since the Court has not acquired jurisdiction over the person of accused **Yolanda P. Milne** as she remains at-large, the case against her is hereby ordered **ARCHIVED**, the same to be revived upon her arrest. Let an *alias* warrant of arrest be issued against the said accused.

Furnish a copy of this Decision to the Bureau of Immigration and the Municipality of Lazi, Siquijor.


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<sup>334</sup> pp. 16-23, Vol. VI, Record



**SO ORDERED.**

Quezon City, Metro Manila.



**AMPARO M. CABOTAJE-TANG**  
Presiding Justice  
Chairperson

**WE CONCUR:**



**BERNELITO R. FERNANDEZ**  
Associate Justice



**RONALD B. MORENO**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above *Decision* were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**AMPARO M. CABOTAJE-TANG**  
Chairperson, Third Division

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**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above *Decision* were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**AMPARO M. CABOTAJE-TANG**  
Presiding Justice